DISTRICT OF COLUMBIA CODE

ANNOTATED

1981 EDITION

1999 SUPPLEMENT

UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 6A

1996 REPLACEMENT

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LEXIS Law Publishing
CHARLOTTESVILLE, VIRGINIA
1999

ISBN 0-327-08403-0
ISBN 0-327-08394-8 (set)

TITLE 28. COMMERCIAL INSTRUMENTS AND TRANSACTIONS.

SUBTITLE I. UNIFORM COMMERCIAL CODE.

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS.

SUBTITLE I. UNIFORM COMMERCIAL CODE.

ARTICLE 1. GENERAL PROVISIONS.

Part 1. Short Title, Construction, Application and Subject Matter.

§ 28:1-101. Short title.

Section references. — This section is referred to in § 1-2295.18.

§ 28:1-102. Purposes; rules of construction; variation by agreement.

Cited in National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996).

§ 28:1-105. Territorial application of this subtitle; parties' power to choose applicable law.

* * * * *

(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. § 28:2-402.
Applicability of the article on leases. §§ 28:2A-104 and 28:2A-106.
Applicability of the article on bank deposits and collections. § 28:4-102.
Governing law in the article on funds transfers. § 28:4A-507.
Letters of credit. § 28:5-116.
Bulk sales subject to the article on bulk sales. § 28:6-103.
Applicability of the article on investment securities. § 28:8-110.
Perfection provisions of the article on secured transactions. § 28:9-103.
Governing law in the article on funds transfers. § 28:4A-507.

(Dec. 30, 1963, 77 Stat. 631, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-105; Mar. 16, 1982, D.C. Law 4-85, § 2, 29 DCR 309; Apr. 30, 1992, D.C. Law 9-95, § 2(b), 39 DCR 1595; July 22, 1992, D.C. Law 9-128, § 2(c)(1), 39 DCR 3830; Apr. 9, 1997, D.C. Law 11-238, § 3(b), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-239, § 3(b), 44 DCR 963; Apr. 9, 1997, D.C. Law 11-240, § 3(b), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(ii), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-238 inserted "Governing law in the article on funds transfers. § 28:4A-507" and "Letters of credit. § 28:5-116" in (2).

D.C. Law 11-239, in (2), substituted "§§ 28:2A-105" for "§§ 28:2A-104", "Bulk sales subject to the article on bulk sales. § 28:6-103" for "Bulk transfers subject to the article on bulk transfers. § 28:6-102.", and "§ 28:8-106" for "§ 28:9-103" following "investment securities."

D.C. Law 11-240, substituted "§ 28:8-110" for "§ 28:8-106" in (2).

D.C. Law 11-255 validated technical corrections appearing in the 1996 Replacement Volume.

Legislative history of Law 11-238. — Law 11-238, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-574, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to both Houses of Congress for its review. D.C. Law 11-238 became effective April 9, 1997.

Legislative history of Law 11-239. — Law 11-239, the "Uniform Commercial Code—Bulk Sales Act of 1996," was introduced in Council and assigned Bill No. 11-575, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 11, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-499 and transmitted to both Houses of Congress for its review. D.C. Law 11-239 became effective on April 9, 1997.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 2. General Definitions and Principles of Interpretation.

§ 28:1-201. General definitions.

Subject to additional definitions contained in the subsequent articles of this subtitle which are applicable to specific articles or parts thereof, and unless the context otherwise requires, in this subtitle:

* * * * *

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this subtitle (sections 28:1-205 and 28:2-208). Whether an agreement has legal consequences is determined by the provisions of this subtitle, if applicable; otherwise by the law of contracts (section 28:1-103). (Compare "Contract".)

* * * * *

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (sections 28:3-303, 28:4-210 and 28:4-211) a person gives "value" for rights if he acquires them:

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(jj), 44 DCR 1271.)

Effect of amendments.

D.C. Law 11-255 validated previously made stylistic corrections in (3) and (44).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Cited in National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996); Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

§ 28:1-203. Obligation of good faith.

Cited in DWS Wash. Holdings, Inc. v. McFadden, 124 WLR 2293 (Super. Ct. 1996).

§ 28:1-205. Course of dealing and usage of trade.

Course of dealing between bank and customer regarding forged checks. — Evidence was insufficient to support a district court's finding that a course of dealing existed between a bank and its customer and that the customer had effectively agreed to accept the risk of loss due to forgeries where none of the facsimile signature resolutions executed by the customer, authorizing the bank to honor checks purporting to bear the facsimile signature of the customer, concerned the account where the forgeries occurred; furthermore, the resolutions were too few, and too closely clustered and far removed in time from the forgeries to put the customer on notice that the bank had a general policy concerning facsimile signatures that would govern the forged account. National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996).

§ 28:1-206. Statute of frauds for kinds of personal property not otherwise covered.

* * * * *

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (section 28:2-201) nor of securities (section 28:8-113) nor to security agreements (section 28:9-203). (Dec. 30, 1963, 77 Stat. 636, Pub. L. 88-243, § 1; 1973 Ed., § 28:1-206; Apr. 9, 1997, D.C. Law 11-240, § 3(c), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240, substituted "28:8-113" for "28:8-319" in (2).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

ARTICLE 2. SALES.

Part 1. Short Title, General Construction and Subject Matter.

§ 28:2-102. Scope; certain security and other transactions excluded from this article.

Cited in Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

§ 28:2-105. Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit".

Cited in Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

Part 2. Form, Formation and Readjustment of Contract.

§ 28:2-209. Modification, rescission and waiver.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(kk), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 16(a), 45 DCR 745.)

Effect of amendments. — Section 27(kk) of D.C. Law 11-255 substituted "recission" for "rescission" in the section heading.

D.C. Law 12-81 substituted "rescission" for "recision" in the section heading.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to

both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-81. — Law 12-81, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-408, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 4, 1997, and December 4, 1997, respectively. Signed by the Mayor on December 22, 1997, it was assigned Act No. 12-246 and transmitted to both Houses of Congress for its review. D.C. Law 12-81 became effective on March 24, 1998.

Part 3. General Obligation and Construction of Contract.

§ 28:2-302. Unconscionable contract or clause.

Cited in Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

§ 28:2-313. Express warranties by affirmation, promise, description, sample.

Express promise not shown. — Plaintiff did not adequately plead any express promise on the part of defendant, where plaintiff attempted to argue defendant's nondisclosure of the addictiveness of nicotine implied a warranty that its cigarettes were not addictive. Witherspoon v. Philip Morris Inc., 964 F. Supp. 455 (D.D.C. 1997).

Nor did buyer's failure to notify. — When a seller willfully fails to disclose a defect, buyer's failure to notify seller of the pending claim cannot be raised as a defense to a breach of warranty claim. Witherspoon v. Philip Morris Inc., 964 F. Supp. 455 (D.D.C. 1997).

§ 28:2-314. Implied warranty: merchantability; usage of trade.

Defenses. — When a seller willfully fails to disclose a defect, buyer's failure to notify seller of the pending claim cannot be raised as a defense to a breach of warranty claim. Witherspoon v. Philip Morris Inc., 964 F. Supp. 455 (D.D.C. 1997).

§ 28:2-328. Sale by auction.

(1) In a sale by auction if goods are put up in lots each lot is the subject of a separate sale.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(ll), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made typographical correction in (1).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 4. Title, Creditors and Good Faith Purchasers.

§ 28:2-403. Power to transfer; good faith purchase of goods; "entrusting".

* * * * *

(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (Article 9), bulk sales (Article 6) and documents of title (Article 7). (Dec. 30, 1963, 77 Stat. 654, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-403; Apr. 9, 1997, D.C. Law 11-239, § 3(c), 44 DCR 936.)

Effect of amendments. — D.C. Law 11-239, in (4), substituted "Article" for "article" throughout and substituted "bulk sales" for "bulk transfers".

Legislative history of Law 11-239. — Law 11-239, the "Uniform Commercial Code—Bulk Sales Act of 1996," was introduced in Council and assigned Bill No. 11-575, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 11, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-499 and transmitted to both Houses of Congress for its review. D.C. Law 11-239 became effective on April 9, 1997.

Part 5. Performance.

§ 28:2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection non-conformity of the goods does not excuse the buyer from so making payment unless

* * * * *

(b) despite tender of the required documents the circumstances would justify injunction against honor under this subtitle (section 28:5-1090(b)).

* * * * *

(Apr. 9, 1997, D.C. Law 11-238, § 3(c), 44 DCR 923.)

Effect of amendments. — D.C. Law 11-238 substituted "this subtitle (section 28:5-109(b))" for "the provisions of this subtitle (section 28:5-114)" in (1)(b).

Legislative history of Law 11-238. — Law 11-238, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-574, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to both Houses of Congress for its review. D.C. Law 11-238 became effective on April 9, 1997.

§ 28:2-513. Buyer's right to inspection of goods.

* * * * *

(3) Unless otherwise agreed and subject to the provisions of this article on C.I.F. contracts (subsection (3) of section 28:2-321), the buyer is not entitled to inspect the goods before payment of the price when the contract provides:

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(mm), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in the introductory language of (3).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 6. Breach, Repudiation and Excuse.

§ 28:2-607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

Notice of breach. — When a seller willfully fails to disclose a defect, buyer's failure to notify seller of the pending claim cannot be raised as a defense to a breach of warranty claim. Witherspoon v. Philip Morris Inc., 964 F. Supp. 455 (D.D.C. 1997).

§ 28:2-615. Excuse by failure of presupposed conditions.

Except so far as a seller may have assumed a greater obligation and subject to the preceding section on substituted performance:

(a) delay in delivery or non-delivery in whole or in part by a seller who complies with paragraphs (b) and (c) is not a breach of his duty under a contract for sale if performance as agreed has been made impracticable by the occurrence of a contingency the non-occurrence of which was a basic assumption on which the contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order whether or not it later proves to be invalid.

(b) where the causes mentioned in paragraph (a) affect only a part of the seller's capacity to perform, he must allocate production and deliveries among his customers but may at his option include regular customers not then under contract as well as his own requirements for further manufacture. He may so allocate in any manner which is fair and reasonable.

(c) the seller must notify the buyer seasonably that there will be delay or non-delivery and, when allocation is required under paragraph (b), of the estimated quota thus made available for the buyer. (Dec. 30, 1963, 77 Stat. 663, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-615; Apr. 9, 1997, D.C. Law 11-255, § 27(nn), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections throughout the section.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 7. Remedies.

§ 28:2-724. Admissibility of market quotations.

Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility. (Dec. 30, 1963, 77 Stat. 670, Pub. L. 88-243, § 1; 1973 Ed., § 28:2-724; Apr. 9, 1997, D.C. Law 11-255, § 27(oo), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made typographical correction.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

ARTICLE 2A. LEASES.

Part 2. Formation and Construction of Lease Contract.

§ 28:2A-214. Exclusion or modification of warranties.

* * * * *

(c) Notwithstanding subsection (b) of this section, but subject to subsection (d) of this section:

(1) Unless the circumstances indicate otherwise, all implied warranties are excluded by expressions like "as is," or "with all faults," or by other language that in common understanding calls the lessee's attention to the exclusion of warranties and makes plain that there is no implied warranty, if in writing and conspicuous;

(2) If the lessee before entering into the lease contract has examined the goods or the sample or model as fully as desired or has refused to examine the goods, there is no implied warranty with regard to defects that an examination ought in the circumstances to have revealed; and

(3) An implied warranty may also be excluded or modified by course of dealing, course of performance, or usage of trade.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(pp), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections throughout the section.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 4. Performance of Lease Contract: Repudiated, Substituted, and Excused.

§ 28:2A-405. Excused performance.

Subject to § 28:2A-404 on substituted performance, the following rules apply:

(1) Delay in delivery or nondelivery in whole or in part by a lessor or a supplier who complies with paragraphs (2) and (3) of this section is not a default under the lease contract if performance as agreed has been made impracticable by the occurrence of a contingency the nonoccurrence of which was a basic assumption on which the lease contract was made or by compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not the regulation or order later proves to be invalid.

(2) If the causes mentioned in paragraph (1) of this section affect only part of the lessor's or the supplier's capacity to perform, he or she shall allocate production and deliveries among his or her customers but at his or her option may include regular customers, not then under contract for sale or lease as well as his or her own requirements for further manufacture. He or she may so allocate in any manner that is fair and reasonable.

(3) The lessor seasonably shall notify the lessee and in the case of a finance lease the supplier seasonably shall notify the lessor and the lessee, if known, that there will be delay or nondelivery and, if allocation is required under paragraph (2) of this section, of the estimated quota thus made available for the lessee. (July 22, 1992, D.C. Law 9-128, § 2(b), 39 DCR 3830; Apr. 9, 1997, D.C. Law 11-255, § 27(qq), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections throughout the section.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 5. Default.

A. In General.

§ 28:2A-501. Default: procedure.

* * * * *

(d) Except as otherwise provided in § 28:1-106 or this article or the lease agreement, the rights and remedies referred to in subsections (b) and (c) of this section are cumulative.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(rr), 44 DCR 1271.)

Effect of amendments.
D.C. Law 11-255 validated a previously made technical correction in (d).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

ARTICLE 3. NEGOTIABLE INSTRUMENTS.

Part 3. Enforcement of Instruments.

Sec.
28:3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

Part 4. Liability of Parties.

Sec.
28:3-406. Negligence contributing to forged signature or alteration of instrument.

Part 2. Negotiation, Transfer, and Indorsement.

§ 28:3-204. Indorsement.

Indorsement on separate document. — An indorsement on a separate paper, called an allonge, may be used only when there is no room for the indorsement on the instrument itself. Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

A signature on a separate unattached paper is not an indorsement of a commercial paper. Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

Part 3. Enforcement of Instruments.

§ 28:3-302. Holder in due course.

Burden of proof. — A holder satisfies the good faith burden by testifying that he or she took the instrument in complete innocence and by disclosing the circumstances of the transfer. Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

Physical possession. — The physical holder of an unendorsed note drawn to order is not a holder in due course. Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

§ 28:3-305. Defenses and claims in recoupment.

Cited in Big Bldrs., Inc. v. Israel, App. D.C., 709 A.2d 74 (1998).

§ 28:3-309. Enforcement of lost, destroyed, or stolen instrument.

Person not in possession at time of loss. — An assignee who did not have possession of a note at the time it was lost was not entitled to enforce it. Dennis Joslin Co. v. Robinson Broadcasting Corp., 977 F. Supp. 491 (D.D.C. 1997).

§ 28:3-312. Lost, destroyed, or stolen cashier's check, teller's check, or certified check.

(a) For the purposes of this section, the term:

(1) "Check" means a cashier's check, teller's check, or certified check.

(2) "Claimant" means a person who claims the right to receive the amount of a cashier's check, teller's check, or certified check that was lost, destroyed, or stolen.

(3) "Declaration of loss" means a written statement, made under penalty of perjury, to the effect that (i) the declarer lost possession of a check, (ii) the declarer is the drawer or payee of the check, in the case of a certified check, or the remitter or payee of the check, in the case of a cashier's check or teller's check, (iii) the loss of possession was not the result of a transfer by the declarer or a lawful seizure, and (iv) the declarer cannot reasonably obtain possession of the check because the check was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

(4) "Obligated bank" means the issuer of a cashier's check or teller's check or the acceptor of a certified check.

(b) A claimant may assert a claim to the amount of a check by a communication to the obligated bank describing the check with reasonable certainty and requesting payment of the amount of the check, if (i) the claimant is the drawer or payee of a certified check or the remitter or payee of a cashier's check or teller's check, (ii) the communication contains or is accompanied by a declaration of loss of the claimant with respect to the check, (iii) the communication is received at a time and in a manner affording the bank a reasonable time to act on it before the check is paid, and (iv) the claimant provides reasonable identification if requested by the obligated bank. Delivery of a declaration of loss is a warranty of the truth of the statements made in the declaration. If a claim is asserted in compliance with this subsection, the following rules apply:

(1) The claim becomes enforceable at the later of (i) the time the claim is asserted, or (ii) the 90th day following the date of the check in the case of a cashier's check or teller's check, or the 90th day following the date of the acceptance in the case of a certified check.

(2) Until the claim becomes enforceable, it has no legal effect and the obligated bank may pay the check or, in the case of a teller's check, may permit the drawee to pay the check. Payment to a person entitled to enforce the check discharges all liability of the obligated bank with respect to the check.

(3) If the claim becomes enforceable before the check is presented for payment, the obligated bank is not obliged to pay the check.

(4) When the claim becomes enforceable, the obligated bank becomes obliged to pay the amount of the check to the claimant if payment of the check has not been made to a person entitled to enforce the check. Subject to § 28:4-302(a)(1), payment to the claimant discharges all liability of the obligated bank with respect to the check.

(c) If the obligated bank pays the amount of a check to a claimant under subsection (b) (4) of this section and the check is presented for payment by a person having rights of a holder in due course, the claimant is obliged to (i) refund the payment to the obligated bank if the check is paid, or (ii) pay the amount of the check to the person having rights of a holder in due course if the check is dishonored.

(d) If a claimant has the right to assert a claim under subsection (b) of this section and is also a person entitled to enforce a cashier's check, teller's check, or certified check which is lost, destroyed, or stolen, the claimant may assert rights with respect to the check either under this section or § 28:3-309. (Apr. 9, 1997, D.C. Law 11-237, § 2(b), 44 DCR 920.)

Legislative history of Law 11-237. — Law 11-237, the "Uniform Commerical Code Negotiable Instruments Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-573, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-497 and transmitted to both Houses of Congress for its review. D.C. Law 11-237 became effective on April 9, 1997.

Part 4. Liability of Parties.

§ 28:3-404. Impostors; fictitious payees.

Risk of loss. — Evidence was insufficient to support a district court's finding that a course of dealing existed between a bank and its customer and that the customer had effectively agreed to accept the risk of loss due to forgeries where none of the facsimile signature resolutions executed by the customer, authorizing the bank to honor checks purporting to bear the facsimile signature of the customer, concerned the account where the forgeries occurred; furthermore, the resolutions were too few, and too closely clustered and far removed in time from the forgeries to put the customer on notice that the bank had a general policy concerning facsimile signatures that would govern the forged account. National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996).

§ 28:3-406. Negligence contributing to forged signature or alteration of instrument.

* * * * *

(c) Under subsection (a) of this section, the burden of proving failure to exercise ordinary care is on the person asserting the preclusion. Under subsection (b) of this section, the burden of proving failure to exercise ordinary care is on the person precluded. (Dec. 30, 1963, 77 Stat. 683, Pub. L. 88-243, § 1; 1973 Ed., § 28:3-406; Mar. 23, 1995, D.C. Law 10-249, § 2(d), 42 DCR 467; Apr. 9, 1997, D.C. Law 11-255, § 27(ss), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (c).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

ARTICLE 4. BANK DEPOSITS AND COLLECTIONS.

Part 1. General Provisions and Definitions.

Part 1. General Provisions and Definitions.

§ 28:4-103. Variation by agreement; measure of damages; action constituting ordinary care.

Cited in National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996).

§ 28:4-104. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires, the term:

* * * * *

(6) "Documentary draft" means a draft to be presented for acceptance or payment if specified documents, certificated securities (section 28:8-102) or instructions for uncertificated securities (section 28:8-102), or other certificates, statements, or the like are to be received by the drawee or other payor before acceptance or payment of the draft.

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(d), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240, substituted "28:8-102" for "28:8-308" in (a)(6).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

Part 4. Relationship Between Payor Bank and Its Customers.

§ 28:4-407. Payor bank's right to subrogation on improper payment.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

ARTICLE 4A. FUNDS TRANSFERS.

Part 4. Payment.

§ 28:4A-402. Obligation of sender to pay receiving bank.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 28:4A-406. Payment by originator to beneficiary; discharge of underlying obligation.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

ARTICLE 5. LETTERS OF CREDIT.

Revision of Article 5. — D.C. Law 11-238 revised Article 5 of Title 28 by substituting present §§ 28:5-101 through 28:5-119 for former §§ 28:5-101 through 28:5-117. No detailed explanation of the changes made by D.C. Law 11-238 has been attempted, but historical citations from the former provisions of Article 5 have been retained at the appropriate locations.

Former §§ 28:5-101 and 28:5-113 were also amended by § 27(tt) and (uu) of D.C. Law 11-255 to validate stylistic changes made in the 1996 Replacement Volume.

Former § 28:5-114 was also amended by § 3(e) of D.C. Law 11-240. D.C. Law 11-240 amended former § 28:5-114 by substituting "28:8-108" for "28:8-306" in (2).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-574, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to

both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

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§ 28:5-101. Indemnities.

This article may be cited as "Uniform Commercial Code—Letters of Credit." (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-101; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923; Apr. 9, 1997, D.C. Law 11-255, § 27(tt), 44 DCR 1271.)

Legislative history of Law 11-238. — Law 11-238, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-574, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to both Houses of Congress for its review. D.C. Law 11-238 became effective on April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Strict compliance required. — Although the District's version of the UCC does not expressly state whether the conformity of a tender is governed by a test of strict compliance or one of lesser, "substantial" compliance, the overwhelming weight of decisional and commentator authority favors strict compliance. Bisker v. NationsBank, App. D.C., 686 A.2d 561 (1996).

Standard of strict compliance best fulfills the purposes of the letter of credit. Bisker v. NationsBank, App. D.C., 686 A.2d 561 (1996).

Requirement of original. — Where letter of credit itself distinguished between an original and a copy, requiring production of the original promissory note, presentment to the bank of a photocopy of note with affidavits stating the original had been lost or destroyed was properly rejected by the bank. Bisker v. NationsBank, App. D.C., 686 A.2d 561 (1996).

Duty to pay. — The unqualified nature of the bank's duty to pay upon satisfaction of the letter of credit's terms relieved it of any duty to consult legal counsel about differences between recourse and nonrecourse negotiable instruments in assessing its risk either of double presentment or of rebuff by its customer in demanding reimbursement after accepting a substitute for the original note. Bisker v. NationsBank, App. D.C., 686 A.2d 561 (1996).

Cited in Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-102. Definitions.

(a) For the purposes of this article, the term:

(1) "Adviser" means a person who, at the request of the issuer, a confirmer, or another adviser, notifies or requests another adviser to notify the beneficiary that a letter of credit has been issued, confirmed, or amended.

(2) "Applicant" means a person at whose request or for whose account a letter of credit is issued. The term "applicant" includes a person who requests an issuer to issue a letter of credit on behalf of another if the person making the request undertakes an obligation to reimburse the issuer.

(3) "Beneficiary" means a person who under the terms of a letter of credit is entitled to have its complying presentation honored. The term "beneficiary" includes a person to whom drawing rights have been transferred under a transferable letter of credit.

(4) "Confirmer" means a nominated person who undertakes, at the request or with the consent of the issuer, to honor a presentation under a letter of credit issued by another.

(5) "Dishonor" of a letter of credit means failure timely to honor or to take an interim action, such as acceptance of a draft, that may be required by the letter of credit.

(6) "Document" means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion (i) which is presented in a written or other medium permitted by the letter of credit or, unless prohibited by the letter of credit, by the standard practice referred to in § 28:5-108(e), and (ii) which is capable of being examined for compliance with the terms and conditions of the letter of credit. A document may not be oral.

(7) "Good faith" means honesty in fact in the conduct or transaction concerned.

(8) "Honor" of a letter of credit means performance of the issuer's undertaking in the letter of credit to pay or deliver an item of value. Unless the letter of credit otherwise provides, honor occurs

(A) Upon payment;

(B) If the letter of credit provides for acceptance, upon acceptance of a draft and, at maturity, its payment; or

(C) If the letter of credit provides for incurring a deferred obligation, upon incurring the obligation and, at maturity, its performance.

(9) "Issuer" means a bank or other person that issues a letter of credit, but does not include an individual who makes an engagement for personal, family, or household purposes.

(10) "Letter of credit" means a definite undertaking that satisfies the requirements of § 28:5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.

(11) "Nominated person" means a person whom the issuer (i) designates or authorizes to pay, accept, negotiate, or otherwise give value under a letter of credit and (ii) undertakes by agreement or custom and practice to reimburse.

(12) "Presentation" means delivery of a document to an issuer or nominated person for honor or giving of value under a letter of credit.

(13) "Presenter" means a person making a presentation as or on behalf of a beneficiary or nominated person.

(14) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Successor of a beneficiary" means a person who succeeds to substantially all of the rights of a beneficiary by operation of law, including a corporation with or into which the beneficiary has been merged or consolidated, an administrator, executor, personal representative, trustee in bankruptcy, debtor in possession, liquidator, and receiver.

(b) Definitions in other articles applying to this article and the sections in which they appear are:

"Accept" or "Acceptance." § 28:3-409

"Value." § 28:3-303, § 28:4-211

(c) Article 1 contains certain additional general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30,

1963, 77 Stat. 709, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-103; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in §§ 28:5-103 and 28:5-108.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-103. Scope.

(a) This article applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit.

(b) The statement of a rule in this article does not by itself require, imply, or negate application of the same or a different rule to a situation not provided for, or to a person not specified, in this article.

(c) With the exception of this subsection, subsections (a) and (d) of this section, §§ 28:5-102(a)(9) and (10), 28:5-106(d), and 28:5-114(d), and except to the extent prohibited in §§ 28:1-102(3) and 28:5-117(d), the effect of this article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this article.

(d) Rights and obligations of an issuer to a beneficiary or a nominated person under a letter of credit are independent of the existence, performance, or nonperformance of a contract or arrangement out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary. (Dec. 30, 1963, 77 Stat. 708, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-102; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in § 25:5-116.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-104. Formal requirements.

A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a record and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in § 28:5-108(e). (Dec. 30, 1963, 77 Stat. 709, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-104; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in §§ 28:5-102 and 28:5-116.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-105. Consideration.

Consideration is not required to issue, amend, transfer, or cancel a letter of credit, advice, or confirmation. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-105; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-106. Issuance, amendment, cancellation, and duration.

(a) A letter of credit is issued and becomes enforceable according to its terms against the issuer when the issuer sends or otherwise transmits it to the person requested to advise or to the beneficiary. A letter of credit is revocable only if it so provides.

(b) After a letter of credit is issued, rights and obligations of a beneficiary, applicant, confirmer, and issuer are not affected by an amendment or cancellation to which that person has not consented except to the extent the letter of credit provides that it is revocable or that the issuer may amend or cancel the letter of credit without that consent.

(c) If there is no stated expiration date or other provision that determines its duration, a letter of credit expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued.

(d) A letter of credit that states that it is perpetual expires 5 years after its stated date of issuance, or if none is stated, after the date on which it is issued. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-106; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in § 28:5-103.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-107. Confirmer, nominated person, and adviser.

(a) A confirmer is directly obligated on a letter of credit and has the rights and obligations of an issuer to the extent of its confirmation. The confirmer also has rights against and obligations to the issuer as if the issuer were an applicant and the confirmer had issued the letter of credit at the request and for the account of the issuer.

(b) A nominated person who is not a confirmer is not obligated to honor or otherwise give value for a presentation.

(c) A person requested to advise may decline to act as an adviser. An adviser that is not a confirmer is not obligated to honor or give value for a presentation. An adviser undertakes to the issuer and to the beneficiary accurately to advise the terms of the letter of credit, confirmation, amendment, or advice received by that person and undertakes to the beneficiary to check the apparent authenticity of the request to advise. Even if the advice is inaccurate, the letter of credit, confirmation, or amendment is enforceable as issued.

(d) A person who notifies a transferee beneficiary of the terms of a letter of credit, confirmation, amendment, or advice has the rights and obligations of an adviser under subsection (c) of this section. The terms in the notice to the transferee beneficiary may differ from the terms in any notice to the transferor beneficiary to the extent permitted by the letter of credit, confirmation, amendment, or advice received by the person who so notifies. (Dec. 30, 1963, 77 Stat. 710, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-107; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

Duties owed to issuing bank. — A confirming bank acquires the rights and obligations of the issuing bank; in doing so, it accepts two duties: to perform its tasks in good faith

and to ensure that the documents in the transaction conform on their face with the letter of credit's requirements. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

Taken together, paragraph (2) of this section and § 28:5-103(1)(g) establish that the only duty owed by a confirming bank is to its customer, the issuing bank; no duty is owed to the issuing bank's customer, the account party. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-108. Issuer's rights and obligations.

(a) Except as otherwise provided in § 28:5-109, an issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e) of this section, appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in § 28:5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

(1) To honor;

(2) If the letter of credit provides for honor to be completed more than 7 business days after presentation, to accept a draft or incur a deferred obligation; or

(3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d) of this section, an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) of this section or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery as described in § 28:5-109(a) or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

(1) The performance or nonperformance of the underlying contract, arrangement, or transaction;

(2) An act or omission of others; or

(3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e) of this section.

(g) If an undertaking constituting a letter of credit under § 28:5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this article:

(1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;

(2) Takes the documents free of claims of the beneficiary or presenter;

(3) Is precluded from asserting a right of recourse on a draft under § 28:3-414 and 28:3-415;

(4) Except as otherwise provided in § 28:5-110 and § 28:5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and

(5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-109; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in §§ 28:5-102, 28:5-104, 28:5-112, and 28:5-113.

Legislative history of Law 11-238. — See note to § 28:5-101.

Duties owed to issuing bank. — A confirming bank acquires the rights and obligations of the issuing bank; in doing so, it accepts two duties: to perform its tasks in good faith and to ensure that the documents in the transaction conform on their face with the letter of credit's requirements. Confeccoes Texteis De Vouzela, Lda. v. Riggs Nat'l Bank, 994 F.2d 851 (D.C. Cir. 1993).

§ 28:5-109. Fraud and forgery.

(a) If a presentation is made that appears on its face strictly to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant:

(1) The issuer shall honor the presentation, if honor is demanded by (i) a nominated person who has given value in good faith and without notice of forgery or material fraud, (ii) a confirmer who has honored its confirmation in good faith, (iii) a holder in due course of a draft drawn under the letter of credit which was taken after acceptance by the issuer or nominated person, or (iv) an assignee of the issuer's or nominated person's deferred obligation that was taken for value and without notice of forgery or material fraud after the obligation was incurred by the issuer or nominated person; and

(2) The issuer, acting in good faith, may honor or dishonor the presentation in any other case.

(b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons only if the court finds that:

(1) The relief is not prohibited under the law applicable to an accepted draft or deferred obligation incurred by the issuer;

(2) A beneficiary, issuer, or nominated person who may be adversely affected is adequately protected against loss that it may suffer because the relief is granted;

(3) All of the conditions to entitle a person to the relief under the law of the District of Columbia have been met; and

(4) On the basis of the information submitted to the court, the applicant is more likely than not to succeed under its claim of forgery or material fraud

and the person demanding honor does not qualify for protection under subsection (a)(1) of this section. (Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in §§ 28:5-108, 28:5-110, and 28:5-113.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-110. Warranties.

(a) If its presentation is honored, the beneficiary warrants:

(1) To the issuer, any other person to whom presentation is made, and the applicant that there is no fraud or forgery of the kind described in § 28:5-109(a); and

(2) To the applicant that the drawing does not violate any agreement between the applicant and beneficiary or any other agreement intended by them to be augmented by the letter of credit.

(b) The warranties in subsection (a) of this section are in addition to warranties arising under Articles 3, 4, 7, and 8 because of the presentation or transfer of documents covered by any of those articles. (Dec. 30, 1963, 77 Stat. 711, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-111; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in § 28:5-108.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-111. Remedies.

(a) If an issuer wrongfully dishonors or repudiates its obligation to pay money under a letter of credit before presentation, the beneficiary, successor, or nominated person presenting on its own behalf may recover from the issuer the amount that is the subject of the dishonor or repudiation. If the issuer's obligation under the letter of credit is not for the payment of money, the claimant may obtain specific performance or, at the claimant's election, recover an amount equal to the value of performance from the issuer. In either case, the claimant may also recover incidental but not consequential damages. The claimant is not obligated to take action to avoid damages that might be due from the issuer under this subsection. If, although not obligated to do so, the claimant avoids damages, the claimant's recovery from the issuer must be reduced by the amount of damages avoided. The issuer has the burden of proving the amount of damages avoided. In the case of repudiation the claimant need not present any document.

(b) If an issuer wrongfully dishonors a draft or demand presented under a letter of credit or honors a draft or demand in breach of its obligation to the applicant, the applicant may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach.

(c) If an adviser or nominated person other than a confirmer breaches an obligation under this article or an issuer breaches an obligation not covered in subsection (a) or (b) of this section, a person to whom the obligation is owed may recover damages resulting from the breach, including incidental but not consequential damages, less any amount saved as a result of the breach. To the

extent of the confirmation, a confirmer has the liability of an issuer specified in this subsection and subsections (a) and (b) of this section.

(d) An issuer, nominated person, or adviser who is found liable under subsection (a), (b), or (c) of this section shall pay interest on the amount owed thereunder from the date of wrongful dishonor or other appropriate date.

(e) Reasonable attorney's fees and other expenses of litigation must be awarded to the prevailing party in an action in which a remedy is sought under this article.

(f) Damages that would otherwise be payable by a party for breach of an obligation under this article may be liquidated by agreement or undertaking, but only in an amount or by a formula that is reasonable in light of the harm anticipated. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-115; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-112. Transfer of letter of credit.

(a) Except as otherwise provided in § 28:5-113, unless a letter of credit provides that it is transferable, the right of a beneficiary to draw or otherwise demand performance under a letter of credit may not be transferred.

(b) Even if a letter of credit provides that it is transferable, the issuer may refuse to recognize or carry out a transfer if:

(1) The transfer would violate applicable law; or

(2) The transferor or transferee has failed to comply with any requirement stated in the letter of credit or any other requirement relating to transfer imposed by the issuer which is within the standard practice referred to in § 28:5-108(e) or is otherwise reasonable under the circumstances. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-116; Mar. 16, 1982, D.C. Law 4-85, § 7, 29 DCR 309; renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 4-85. — Law 4-85, the "Uniform Commercial Code Amendments Act of 1981," was introduced in Council and assigned Bill No. 4-89, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 24, 1981, and December 8, 1981, respectively. Signed by the Mayor on January 18, 1982, it was assigned Act No. 4-139 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-113. Transfer by operation of law.

(a) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in the name of the beneficiary without disclosing its status as a successor.

(b) A successor of a beneficiary may consent to amendments, sign and present documents, and receive payment or other items of value in its own name as the disclosed successor of the beneficiary. Except as otherwise provided in subsection (e) of this section, an issuer shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for its predecessor upon compliance with the requirements for recognition by the issuer of a

transfer of drawing rights by operation of law under the standard practice referred to in § 28:5-108(e) or, in the absence of such a practice, compliance with other reasonable procedures sufficient to protect the issuer.

(c) An issuer is not obliged to determine whether a purported successor is a successor of a beneficiary or whether the signature of a purported successor is genuine or authorized.

(d) Honor of a purported successor's apparently complying presentation under subsection (a) or (b) of this section has the consequences specified in § 28:5-108(i) even if the purported successor is not the successor of a beneficiary. Documents signed in the name of the beneficiary or of a disclosed successor by a person who is neither the beneficiary nor the successor of the beneficiary are forged documents for the purposes of § 28:5-109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) of this section or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-116; Mar. 16, 1982, D.C. Law 4-85, § 7, 29 DCR 309; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923; Apr. 9, 1997, D.C. Law 11-255, § 27(uu), 44 DCR 1271.)

Section references. — This section is referred to in §§ 28:5-108 and 28:5-112.

Legislative history of Law 4-85. — See note to § 28:5-112.

Legislative history of Law 11-238. — See note to § 28:5-101.

Legislative history of Law 11-255. — See note to § 28:5-101.

§ 28:5-114. Assignment of proceeds.

(a) In this section, the term "proceeds of a letter of credit" means the cash, check, accepted draft, or other item of value paid or delivered upon honor or giving of value by the issuer or any nominated person under the letter of credit. The term "proceeds of a letter of credit" does not include a beneficiary's drawing rights or documents presented by the beneficiary.

(b) A beneficiary may assign its right to part or all of the proceeds of a letter of credit. The beneficiary may do so before presentation as a present assignment of its right to receive proceeds contingent upon its compliance with the terms and conditions of the letter of credit.

(c) An issuer or nominated person need not recognize an assignment of proceeds of a letter of credit until it consents to the assignment.

(d) An issuer or nominated person has no obligation to give or withhold its consent to an assignment of proceeds of a letter of credit, but consent may not be unreasonably withheld if the assignee possesses and exhibits the letter of credit and presentation of the letter of credit is a condition to honor.

(e) Rights of a transferee beneficiary or nominated person are independent of the beneficiary's assignment of the proceeds of a letter of credit and are superior to the assignee's right to the proceeds.

(f) Neither the rights recognized by this section between an assignee and an issuer, transferee beneficiary, or nominated person nor the issuer's or nominated person's payment of proceeds to an assignee or a third person affect the rights between the assignee and any person other than the issuer, transferee

beneficiary, or nominated person. The mode of creating and perfecting a security interest in or granting an assignment of a beneficiary's rights to proceeds is governed by Article 9 or other law. Against persons other than the issuer, transferee beneficiary, or nominated person, the rights and obligations arising upon the creation of a security interest or other assignment of a beneficiary's right to proceeds and its perfection are governed by Article 9 or other law. (Dec. 30, 1963, 77 Stat. 713, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-116; Mar. 16, 1982, D.C. Law 4-85, § 7, 29 DCR 309; Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(e), 44 DCR 1087.)

Section references. — This section is referred to in § 28:5-103.

Legislative history of Law 4-85 — See note to § 28:5-112.

Legislative history of Law 11-238. — See note to § 28:5-101.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 12, 1997.

§ 28:5-115. Statute of limitations.

An action to enforce a right or obligation arising under this article must be commenced within one year after the expiration date of the relevant letter of credit or one year after the cause of action accrues, whichever occurs later. A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. (Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-116. Choice of law and forum.

(a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed or otherwise authenticated by the affected parties in the manner provided in § 28:5-104 or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) of this section applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued. For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.

(c) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this article would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b) of this section, (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this article and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 28:5-103(c).

(d) If there is conflict between this article and Article 3, 4, 4A, or 9, this article governs.

(e) The forum for settling disputes arising out of an undertaking within this article may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a) of this section. (Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-117. Subrogation of issuer, applicant, and nominated person.

(a) An issuer that honors a beneficiary's presentation is subrogated to the rights of the beneficiary to the same extent as if the issuer were a secondary obligor of the underlying obligation owed to the beneficiary and of the applicant to the same extent as if the issuer were the secondary obligor of the underlying obligation owed to the applicant.

(b) An applicant that reimburses an issuer is subrogated to the rights of the issuer against any beneficiary, presenter, or nominated person to the same extent as if the applicant were the secondary obligor of the obligations owed to the issuer and has the rights of subrogation of the issuer to the rights of the beneficiary stated in subsection (a) of this section.

(c) A nominated person who pays or gives value against a draft or demand presented under a letter of credit is subrogated to the rights of:

(1) The issuer against the applicant to the same extent as if the nominated person were a secondary obligor of the obligation owed to the issuer by the applicant;

(2) The beneficiary to the same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the beneficiary; and

(3) The applicant to same extent as if the nominated person were a secondary obligor of the underlying obligation owed to the applicant.

(d) Notwithstanding any agreement or term to the contrary, the rights of subrogation stated in subsections (a) and (b) of this section do not arise until the issuer honors the letter of credit or otherwise pays and the rights in subsection (c) of this section do not arise until the nominated person pays or otherwise gives value. Until then, the issuer, nominated person, and the applicant do not derive under this section present or prospective rights forming the basis of a claim, defense, or excuse. (Dec. 30, 1963, 77 Stat. 712, Pub. L. 88-243, § 1; 1973 Ed., § 28:5-114; Mar. 16, 1993, D.C. Law 9-196, § 3, 39 DCR

9165, renumbered and amended Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Section references. — This section is referred to in §§ 28:5-103 and 28:5-108.

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

Legislative history of Law 11-238. — See note to § 28:5-101.

No duty to consult counsel. — The unqualified nature of the bank's duty to pay upon satisfaction of the letter of credit's terms relieved it of any duty to consult legal counsel about differences between recourse and nonrecourse negotiable instruments in assessing its risk either of double presentment or of rebuff by its customer in demanding reimbursement after accepting a substitute for the original note. Bisker v. NationsBank, App. D.C., 686 A.2d 561 (1996).

§ 28:5-118. Applicability.

This article applies to a letter of credit that is issued on or after April 9, 1997. This article does not apply to a transaction, event, obligation, or duty arising out of or associated with a letter of credit that was issued before April 9, 1997. (Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

§ 28:5-119. Savings clause.

A transaction arising out of or associated with a letter of credit that was issued before the effective date of this article and the rights, obligations, and interests flowing from that transaction are governed by any statute or other law amended or repealed by this article as if repeal or amendment had not occurred and may be terminated, completed, consummated, or enforced under that statute or other law. (Apr. 9, 1997, D.C. Law 11-238, § 2, 44 DCR 923.)

Legislative history of Law 11-238. — See note to § 28:5-101.

ARTICLE 6. BULK TRANSFERS.

Sec.
28:6-101. Short title.
28:6-102. Definitions and index of definitions.
28:6-103. Applicability of article.
28:6-104. Obligations of buyer.
28:6-105. Notice to claimants.
28:6-106. Schedule of distribution.
28:6-107. Liability for noncompliance.
28:6-108. Bulk sales by auction; bulk sales conducted by liquidator.
28:6-109. What constitutes filing; duties of filing officer; information from filing officer.
28:6-110. Limitation of actions.

Revision of article. — D.C. Law 11-239 revised this article by substituting present §§ 28:6-101 through 28:6-110 for former §§ 28:6-101 through 28:6-111. No detailed explanation of the changes made by D.C. Law 11-239 has been attempted, but, where appro-

priate, historical citations to the former sections have been added to the corresponding sections in the revised chapter.

Legislative history of Law 11-239. — Law 11-239, the "Uniform Commercial Code—Bulk Sales Act of 1996," was introduced in Council and assigned Bill No. 11-575, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 11, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-499 and transmitted to both Houses of Congress for its review. D.C. Law 11-239 became effective on April 9, 1997.

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§ 28:6-101. Short title.

This article may be cited as the "Uniform Commercial Code—Bulk Sales." (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-101; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in § 29-240.

Legislative history of Law 11-239. — Law 11-239, the "Uniform Commercial Code—Bulk Sales Act of 1996," was introduced in Council and assigned Bill No. 11-575, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 11, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-499 and transmitted to both Houses of Congress for its review. D.C. Law 11-239 became effective on April 9, 1997.

§ 28:6-102. Definitions and index of definitions.

(a) In this article, unless the context otherwise requires, the term:

(1) "Assets" means the inventory that is the subject of a bulk sale and any tangible and intangible personal property used or held for use primarily in, or arising from, the seller's business and sold in connection with that inventory, but the term does not include:

(A) Fixtures (§ 28:9-313(a)(1)) other than readily removable factory and office machines;

(B) The lessee's interest in a lease of real property; or

(C) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

(2) "Auctioneer" means a person whom the seller engages to direct, conduct, control, or be responsible for a sale by auction.

(3) "Bulk sale" means:

(A) In the case of a sale by auction or a sale or series of sales conducted by a liquidator on the seller's behalf, a sale or series of sales not in the ordinary course of the seller's business of more than half of the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the auctioneer or liquidator has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale or series of sales; and

(B) In all other cases, a sale not in the ordinary course of the seller's business of more than half the seller's inventory, as measured by value on the date of the bulk-sale agreement, if on that date the buyer has notice, or after reasonable inquiry would have had notice, that the seller will not continue to operate the same or a similar kind of business after the sale.

(4) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured,

legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of the District permit the holder of the claim to recover them in an action against the obligor.

(5) "Claimant" means a person holding a claim incurred in the seller's business other than:

(A) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay;

(B) A claim for injury to an individual or to property, or for breach of warranty, unless:

(i) A right of action for the claim has accrued;

(ii) The claim has been asserted against the seller; and

(iii) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and

(C) A claim for taxes owing to a governmental unit, if:

(i) A statute governing the enforcement of the claim permits or requires notice of the bulk sale to be given to the governmental unit in a manner other than by compliance with the requirements of this article; and

(ii) Notice is given in accordance with the statute.

(6) "Creditor" means a claimant or other person holding a claim.

(7)(A) "Date of the bulk sale" means:

(i) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10% of the net proceeds is paid to or for the benefit of the seller; and

(ii) In all other cases, the later of the date on which:

(I) More than 10% of the net contract price is paid to or for the benefit of the seller; or

(II) More than 10% of the assets, as measured by value, are transferred to the buyer.

(B) For purposes of this subsection:

(i) Delivery of a negotiable instrument (§ 28:3-104(a)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

(ii) To the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and

(iii) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.

(8) "Date of the bulk-sale agreement" means:

(A) In the case of a sale by auction or conducted by a liquidator, the date on which the seller engages the auctioneer or liquidator; and

(B) In all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.

(9) "Debt" means liability on a claim.

(10) "Liquidator" means a person who is regularly engaged in the business of disposing of assets for businesses contemplating liquidation or dissolution.

(11) "Mayor" means the Mayor of the District of Columbia.

(12) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less:

(A) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(B) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(13) "Net proceeds" means the new consideration received for assets sold at a sale by auction or a sale conducted by a liquidator on the seller's behalf less:

(A) Commissions and reasonable expenses of the sale;

(B) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

(C) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

(14) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

(15) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

(16) "Value" means fair market value.

(17) "Verified" means signed and sworn to or affirmed.

(b) The following definitions in other Articles apply to this article:

(1) "Buyer." § 28:2-103(1)(a).

(2) "Equipment." § 28:9-109(2).

(3) "Inventory." § 28:9-109(4).

(4) "Sale." § 28:2-106(1).

(5) "Seller." § 28:2-103(1)(d).

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-102; Feb. 7, 1980, D.C. Law 3-49, § 2, 26 DCR 2731; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-104 and 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-103. Applicability of article.

(a) Except as otherwise provided in subsection (c) of this section, this article applies to a bulk sale if:

(1) The seller's principal business is:

(A) The sale of inventory from stock; or

(B) A restaurant, cafe, bakery, tavern, or similar establishment where food or drink is furnished for consideration; and

(2) On the date of the bulk-sale agreement the seller is located in the District or, if the seller is located in a jurisdiction that is not a part of the United States, the seller's major executive office in the United States is in the District.

(b) A seller is deemed to be located at his or her place of business. If a seller has more than one place of business, the seller is deemed located at his or her chief executive office.

(c) This article does not apply to:

(1) A transfer made to secure payment or performance of an obligation;

(2) A transfer of collateral to a secured party pursuant to § 28:9-503;

(3) A sale of collateral pursuant to § 28:9-504;

(4) Retention of collateral pursuant to § 28:9-505;

(5) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien, or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero;

(6) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee;

(7) A sale by an executor, administrator, receiver, trustee in bankruptcy, or any public officer under judicial process;

(8) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization;

(9) A sale to a buyer whose principal place of business is in the United States and who:

(A) Not earlier than 21 days before the date of the bulk sale, (i) obtains from the seller a verified and dated list of claimants of whom the seller has notice 3 days before the seller sends or delivers the list to the buyer, or (ii) conducts a reasonable inquiry to discover the claimants;

(B) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be;

(C) Is not insolvent after the assumption; and

(D) Gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to the claimants identified in subparagraph (B) of this paragraph or by filing a notice in the office of the Mayor;

(10) A sale to a buyer whose principal place of business is in the United States and who:

(A) Assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;

(B) Is not insolvent after the assumption; and

(C) Gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the office of the Mayor;

(11) A sale to a new organization that is organized to take over and continue the business of the seller and that has its principal place of business in the United States if:

(A) The buyer assumes in full the debts that were incurred in the seller's business before the date of the bulk sale;

(B) The seller receives nothing from the sale except an interest in the new organization that is subordinate to the claims against the organization arising from the assumption; and

(C) The buyer gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the office of the Mayor;

(12) A sale of assets having:

(A) A value, net of liens and security interests, of less than $10,000. If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale; or

(B) A value of more than $25,000,000 on the date of the bulk-sale agreement; or

(13) A sale required by, and made pursuant to, statute.

(d) The notice under subsection (c)(9)(D) of this section must state (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

(e) The notice under subsections (c)(10)(C) and (c)(11)(C) of this section must state (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

(f) For purposes of subsection (c)(12) of this section, the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation. (Dec. 30, 1963, 77 Stat. 714, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-103; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:1-105, 28:6-107, and 29-240.

Legislative history of Law 3-49. — Law 3-49, the "Uniform Commercial Code — Bulk Transfers Amendment Act of 1979," was introduced in Council and assigned Bill No. 3-104, which was referred to the Committee on Public Services and Consumer Affairs. The Bill was adopted on first and second readings on November 6, 1979 and November 20, 1979, respectively. Signed by the Mayor on December 12, 1979, it was assigned Act No. 3-135 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-104. Obligations of buyer.

(a) In a bulk sale as defined in § 28:6-102(a)(3)(B), the buyer shall:

(1) Obtain from the seller a list of all business names and addresses used by the seller within 3 years before the date the list is sent or delivered to the buyer;

(2) Unless excused under subsection (b) of this section, obtain from the seller a verified and dated list of claimants of whom the seller has notice 3 days before the seller sends or delivers the list to the buyer and including, to the extent known by the seller, the address of and the amount claimed by each claimant;

(3) Obtain from the seller or prepare a schedule of distribution (§ 28:6-106(a));

(4) Give notice of the bulk sale in accordance with § 28:6-105;

(5) Unless excused under § 28:6-106(d), distribute the net contract price in accordance with the undertakings of the buyer in the schedule of distribution; and

(6) Unless excused under subsection (b) of this section, make available the list of claimants (subsection (a)(2) of this section) by:

(A) Promptly sending or delivering a copy of the list without charge to any claimant whose written request is received by the buyer no later than 6 months after the date of the bulk sale;

(B) Permitting any claimant to inspect and copy the list at any reasonable hour upon request received by the buyer no later than 6 months after the date of the bulk sale; or

(C) Filing a copy of the list in the office of the Mayor no later than the time for giving a notice of the bulk sale (§ 28:6-105(e)). A list filed in accordance with this subparagraph must state the individual, partnership, or corporate name and a mailing address of the seller.

(b) A buyer who gives notice in accordance with § 28:6-105(b) is excused from complying with the requirements of subsection (a)(2) and (6) of this section. (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-104; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-105, 28:6-107, 28:6-108, 29-240, and 47-2022.

Legislative history of Law 11-239. — See note to § 28:6-101.

Failure to comply with the District of Columbia Bulk Sales Act does not provide a defense to a claim of conversion against a defendant with actual notice of the plaintiff's claim. Cooper v. McKenzie, 115 WLR 1813 (Super. Ct. 1987).

§ 28:6-105. Notice to claimants.

(a) Except as otherwise provided in subsection (b) of this section, to comply with § 28:6-104(a)(4) the buyer shall send or deliver a written notice of the bulk sale to each claimant on the list of claimants (§ 28:6-104(a)(2)) and to any other claimant of whom the buyer has knowledge at the time the notice of the bulk sale is sent or delivered.

(b) A buyer may comply with § 28:6-104(a)(4) by filing a written notice of the bulk sale in the office of the Mayor if:

(1) On the date of the bulk-sale agreement the seller has 200 or more claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay; or

(2) The buyer has received a verified statement from the seller stating that, as of the date of the bulk-sale agreement, the number of claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay, is 200 or more.

(c) The written notice of the bulk sale must be accompanied by a copy of the schedule of distribution (§ 28:6-106(a)) and state at least:

(1) That the seller and buyer have entered into an agreement for a sale that may constitute a bulk sale under the laws of the District of Columbia;

(2) The date of the agreement;

(3) The date on or after which more than 10% of the assets were or will be transferred;

(4) The date on or after which more than 10% of the net contract price was or will be paid, if the date is not stated in the schedule of distribution;

(5) The name and a mailing address of the seller;

(6) Any other business name and address listed by the seller pursuant to § 28:6-104(a)(1);

(7) The name of the buyer and an address of the buyer from which information concerning the sale can be obtained;

(8) A statement indicating the type of assets or describing the assets item by item;

(9) The manner in which the buyer will make available the list of claimants (§ 28:6-104(a)(6)), if applicable; and

(10) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied, and the name of the person to whom it is owed.

(d) For purposes of subsection (c)(5) and (7), the name of a person is the person's individual, partnership, or corporate name.

(e) The buyer shall give notice of the bulk sale not less than 25 days before the date of the bulk sale and, if the buyer gives notice in accordance with subsection (a) of this section, not more than 30 days after obtaining the list of claimants.

(f) A written notice substantially complying with the requirements of subsection (c) of this section is effective even though it contains minor errors that are not seriously misleading.

(g) A form substantially as follows is sufficient to comply with subsection (c):

Notice of Sale

(1) _____, whose address is _____, is described in this notice as the "seller."

(2) _____, whose address is _____, is described in this notice as the "buyer."

(3) The seller has disclosed to the buyer that within the past 3 years the seller has used other business names, operated at other addresses, or both, as follows: _____.

(4) The seller and the buyer have entered into an agreement dated _____, for a sale that may constitute a bulk sale under the laws of the state of _____.

(5) The date on or after which more than 10% of the assets that are the subject of the sale were or will be transferred is _____, and if not stated in the schedule of distribution the date on or after which more than 10% of the net contract price was or will be paid is _____.

(6) The following assets are the subject of the sale: _____.

(7) [If applicable] The buyer will make available to claimants of the seller a list of the seller's claimants in the following manner: _____.

(8) [If applicable] The sale is to satisfy $ _____ of an antecedent debt owed by the seller to _____.

(9) A copy of the schedule of distribution of the net contract price accompanies this notice. (Dec. 30, 1963, 77 Stat. 715, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-105; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-104, 28:6-106, 28:6-108, and 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

Failure to comply with the District of Columbia Bulk Sales Act does not provide a defense to a claim of conversion against a defendant with actual notice of the plaintiff's claim. Cooper v. McKenzie, 115 WLR 1813 (Super. Ct. 1987).

§ 28:6-106. Schedule of distribution.

(a) The seller and buyer shall agree on how the net contract price is to be distributed and set forth their agreement in a written schedule of distribution.

(b) The schedule of distribution may provide for distribution to any person at any time, including distribution of the entire net contract price to the seller.

(c) The buyer's undertakings in the schedule of distribution run only to the seller. However, a buyer who fails to distribute the net contract price in accordance with the buyer's undertakings in the schedule of distribution is liable to a creditor only as provided in § 28:6-107(1).

(d) If the buyer undertakes in the schedule of distribution to distribute any part of the net contract price to a person other than the seller, and, after the buyer has given notice in accordance with § 28:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the buyer is excused from any obligation arising under this article or under any contract with the seller to distribute the net contract price in accordance with the buyer's undertakings in the schedule if the buyer:

(1) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

(2) Distributes the net contract price remaining available in accordance with an order of court;

(3) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or

(4) Reaches a new agreement with the seller for the distribution of the net contract price remaining available, sets forth the new agreement in an amended schedule of distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the buyer's undertakings in the amended schedule.

(e) The notice under subsection (d)(4) of this section must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with § 28:6-105(a) or (b), whichever is applicable, at least 14 days before the buyer distributes any part of the net contract price remaining available.

(f) If the seller undertakes in the schedule of distribution to distribute any part of the net contract price, and, after the buyer has given notice in accordance with § 28:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the seller and any person in control of the seller are excused from any obligation arising under this article or under any agreement with the buyer to distribute the net contract price in accordance with the seller's undertakings in the schedule if the seller:

(1) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

(2) Distributes the net contract price remaining available in accordance with an order of court;

(3) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or

(4) Prepares a written amended schedule of distribution of the net contract price remaining available for distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the amended schedule.

(g) The notice under subsection (f)(4) of this section must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with § 28:6-105(a) or (b), whichever is applicable, at least 14 days before the seller distributes any part of the net contract price remaining available. (Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-104, 28:6-108, and 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-107. Liability for noncompliance.

(a) Except as provided in subsection (c) of this section, and subject to the limitation in subsection (d):

(1) A buyer who fails to comply with the requirements of § 28:6-104(a)(5) with respect to a creditor is liable to the creditor for damages in the amount of the claim, reduced by any amount that the creditor would not have realized if the buyer had complied; and

(2) A buyer who fails to comply with the requirements of any other subsection of § 28:6-104 with respect to a claimant is liable to the claimant for damages in the amount of the claim, reduced by any amount that the claimant would not have realized if the buyer had complied.

(b) In an action under subsection (a) of this section, the creditor has the burden of establishing the validity and amount of the claim, and the buyer has the burden of establishing the amount that the creditor would not have realized if the buyer had complied.

(c) A buyer who:

(1) Made a good faith and commercially reasonable effort to comply with the requirements of § 28:6-104(a) or to exclude the sale from the application of this article under § 28:6-103(c); or

(2) On or after the date of the bulk-sale agreement, but before the date of the bulk sale, held a good faith and commercially reasonable belief that this article does not apply to the particular sale is not liable to creditors for failure to comply with the requirements of § 28:6-104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort or belief.

(d) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of § 28:6-104(a) may not exceed an amount equal to:

(1) If the assets consist only of inventory and equipment, twice the net contract price, less the amount of any part of the net contract price paid to or applied for the benefit of the seller or a creditor; or

(2) If the assets include property other than inventory and equipment, twice the net value of the inventory and equipment less the amount of the portion of any part of the net contract price paid to or applied for the benefit of the seller or a creditor which is allocable to the inventory and equipment.

(e) For the purposes of subsection (d)(2) of this section, the "net value" of an asset is the value of the asset less (i) the amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset, and (ii) the amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part

of the net contract price paid to or applied for the benefit of the seller or a creditor that is "allocable to the inventory and equipment" is the portion that bears the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

(f) A payment made by the buyer to a person to whom the buyer is, or believes he or she is, liable under subsection (a) of this section reduces pro tanto the buyer's cumulative liability under subsection (d) of this section.

(g) No action may be brought under subsection (a)(2) of this section by or on behalf of a claimant whose claim is unliquidated or contingent.

(h) A buyer's failure to comply with the requirements of § 28:6-104(a) does not (i) impair the buyer's rights in or title to the assets, (ii) render the sale ineffective, void, or voidable, (iii) entitle a creditor to more than a single satisfaction of his or her claim, or (iv) create liability other than as provided in this article.

(i) Payment of the buyer's liability under subsection (a) of this section discharges pro tanto the seller's debt to the creditor.

(j) Unless otherwise agreed, a buyer has an immediate right of reimbursement from the seller for any amount paid to a creditor in partial or total satisfaction of the buyer's liability under subsection (a) of this section.

(k) If the seller is an organization, a person who is in direct or indirect control of the seller, and who knowingly, intentionally, and without legal justification fails, or causes the seller to fail, to distribute the net contract price in accordance with the schedule of distribution is liable to any creditor to whom the seller undertook to make payment under the schedule for damages caused by the failure. (Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-106, 28:6-108, 28:6-110, and 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-108. Bulk sales by auction; bulk sales conducted by liquidator.

(a) §§ 28:6-104, 28:6-105, 28:6-106, and 28:6-107 apply to a bulk sale by auction and a bulk sale conducted by a liquidator on the seller's behalf with the following modifications:

(1) "Buyer" refers to auctioneer or liquidator, as the case may be;

(2) "Net contract price" refers to net proceeds of the auction or net proceeds of the sale, as the case may be;

(3) The written notice required under § 28:6-105(c) must be accompanied by a copy of the schedule of distribution (§ 28:6-106(a)) and state at least:

(A) That the seller and the auctioneer or liquidator have entered into an agreement for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the District of Columbia;

(B) The date of the agreement;

(C) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf;

(D) The date on or after which more than 10% of the net proceeds of the sale were or will be paid, if the date is not stated in the schedule of distribution;

(E) The name and a mailing address of the seller;

(F) Any other business name and address listed by the seller pursuant to § 28:6-104(a)(1);

(G) The name of the auctioneer or liquidator and an address of the auctioneer or liquidator from which information concerning the sale can be obtained;

(H) A statement indicating the type of assets or describing the assets item by item;

(I) The manner in which the auctioneer or liquidator will make available the list of claimants (§ 28:6-104(a)(6)), if applicable; and

(J) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed; and

(4) In a single bulk sale the cumulative liability of the auctioneer or liquidator for failure to comply with the requirements of this section may not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold less the amount of the portion of any part of the net proceeds paid to or applied for the benefit of a creditor which is allocable to the inventory and equipment.

(b) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes he or she is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under subsection (a)(4) of this section.

(c) A form substantially as follows is sufficient to comply with subsection (a)(3) of this section:

Notice of Sale

(1) _____, whose address is _____, is described in this notice as the "seller."

(2) _____, whose address is _____, is described in this notice as the "auctioneer" or "liquidator."

(3) The seller has disclosed to the auctioneer or liquidator that within the past 3 years the seller has used other business names, operated at other addresses, or both, as follows: _____.

(4) The seller and the auctioneer or liquidator have entered into an agreement dated _____ for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the District of Columbia.

(5) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf is _____, and [if not stated in the schedule of distribution] the date on or after which more than 10% of the net proceeds of the sale were or will be paid is _____.

(6) The following assets are the subject of the sale: _____.

(7) [If applicable] The auctioneer or liquidator will make available to claimants of the seller a list of the seller's claimants in the following manner: _____.

(8) [If applicable] The sale is to satisfy $ _____ of an antecedent debt owed by the seller to _____.

(9) A copy of the schedule of distribution of the net proceeds accompanies this notice.

(d) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of § 28:6-104(a) and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-108; Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in §§ 28:6-104 and 28:6-105.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-109. What constitutes filing; duties of filing officer; information from filing officer.

(a) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this article.

(b) The filing officer shall:

(1) Mark each notice or list with a file number and with the date and hour of filing;

(2) Hold the notice or list or a copy for public inspection;

(3) Index the notice or list according to each name given for the seller and for the buyer; and

(4) Note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(c) If the person filing a notice or list furnishes the filing officer with a copy, the filing officer upon request shall note upon the copy the file number and date and hour of the filing of the original and send or deliver the copy to the person.

(d) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing, and the fee for indexing each name more than 2 shall be established by the Mayor by rulemaking adopted pursuant to the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.).

(e) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. Upon request of any person, and payment of the required fee, the filing officer shall furnish a copy of any filed notice or list. The fee for a certificate in the standard form prescribed by the Mayor, the fee for a certificate not in the standard form, and the fee for a copy of a filed notice or list shall be established by the Mayor by rulemaking adopted pursuant to the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 et seq.).

(f) The filing officer shall keep each notice or list for 2 years after it is filed. (Dec. 30, 1963, 77 Stat. 716, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-107; renumbered and amended, Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in § 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

§ 28:6-110. Limitation of actions.

(a) Except as provided in subsection (b) of this section, an action under this article against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

(b) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation is tolled and an action under this article may be commenced within the earlier of (i) one year after the person bringing the action discovers that the sale has occurred, or (ii) one year after the person bringing the action should have discovered that the sale has occurred, but no later than 2 years after the date of the bulk sale. Complete noncompliance with the requirements of this article does not of itself constitute concealment.

(c) An action under § 28:6-107(k) must be commenced within one year after the alleged violation occurs. (Dec. 30, 1963, 77 Stat. 717, Pub. L. 88-243, § 1; 1973 Ed., § 28:6-111; renumbered and amended, Apr. 9, 1997, D.C. Law 11-239, § 2, 44 DCR 936.)

Section references. — This section is referred to in § 29-240.

Legislative history of Law 11-239. — See note to § 28:6-101.

ARTICLE 7. WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE.

Part 1. General.

Part 3. Bills of Lading; Special Provisions.

Part 1. General.

§ 28:7-102. Definitions and index of definitions.

* * * * *

(2) Other definitions applying to this article or to specified parts thereof, and the sections in which they appear are:

"Duly negotiated." section 28:7-501.

"Person entitled under the document." section 28:7-403 (4).

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(vv), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made typographical correction in (2).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to

both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 3. Bills of Lading; Special Provisions.

§ 28:7-301. Liability for non-receipt or misdescription; "said to contain"; "shipper's load and count"; improper handling.

* * * * *

(4) The issuer may by inserting in the bill the words "shipper's weight, load and count" or other words of like purport indicate that the goods were loaded by the shipper; and if such statement be true the issuer shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(ww), 44 DCR 1271.)

Effect of amendments. — D.C. 11-255 validated a previously made stylistic and technical correction in (4).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28:7-308. Enforcement of carrier's lien.

(1) A carrier's lien may be enforced by public or private sale of the goods, en bloc or in parcels, at any time or place and on any terms which are commercially reasonable, after notifying all persons known to claim an interest in the goods. Such notification must include a statement of the amount due, the nature of the proposed sale and the time and place of any public sale. The fact that a better price could have been obtained by a sale at a different time or in a different method from that selected by the carrier is not of itself sufficient to establish that the sale was not made in a commercially reasonable manner. If the carrier either sells the goods in the usual manner in any recognized market therefor or if he sells at the price current in such market at the time of his sale or if he has otherwise sold in conformity with commercially reasonable practices among dealers in the type of goods sold he has sold in a commercially reasonable manner. A sale of more goods than apparently necessary to be offered to ensure satisfaction of the obligation is not commercially reasonable except in cases covered by the preceding sentence.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(xx), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (1).

Legislative history of Law 11-255. — See note to § 28:7-301.

ARTICLE 8. INVESTMENT SECURITIES.

Part 1. Short Title and General Matters.

Part 2. Issue and Issuer.

Part 3. Transfer of Certificated and Uncertificated Securities.

Part 4. Registration.

Part 5. Security Entitlements.

Part 6. Transitional Provisions.

Revision of article. — D.C. Law 11-240 revised Article 8 by substituting present §§ 28:8-101 through 28:8-116 for former §§ 28:8-101 through 28:8-108, present §§ 28:8-201 through 28:8-210 for former §§ 28:8-201 through 28:8-208, present §§ 28:8-301 through

28:8-307 for former §§ 28:8-301 through 28:8-321, and present §§ 28:8-401 through 28:8-407 for former §§ 28:8-401 through 28:8-408, and adding present §§ 28:8-501 through 28:8-511 and 28:8-601. No detailed explanation of the changes made by the D.C. Law 11-240 has been attempted, but, where, appropriate, historical citations to the former sections have been added to corresponding sections in the revised article.

Former 28:8-102 was also amended by § 27(yy) of D.C. Law 11-255. The amendment of former 28:8-102 by D.C. Law 11-255 validated previously made technical corrections in (b)(1) and (11).

Former § 28:8-313 was also amended by § 27(zz) of D.C. Law 11-255. The amendment by D.C. Law 11-255 validated a previously made stylistic correction in (b)(4).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

Part 1. Short Title and General Matters.

§ 28:8-101. Short title.

This article may be cited as "Uniform Commercial Code—Investment Securities." (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-101; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 9-196. — Law 9-196, the "Uniform Commercial Code Investment Securities Amendment Act of 1992," was introduced in Council and assigned Bill No. 9-20, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on October 6, 1992, and November 4, 1992, respectively. Signed by the Mayor on November 25, 1992, it was assigned Act No. 9-321 and transmitted to both Houses of Congress for its review. D.C. Law 9-196 became effective on March 16, 1993.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:8-102. Definitions.

(a) For the purposes of this article, the term:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(A) A person that is registered as a "clearing agency" under the federal securities laws;

(B) A federal reserve bank; or

(C) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(A) Send a signed writing; or

(B) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 28:8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9)(A) "Financial asset," except as otherwise provided in § 28:8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this article.

(B) As context requires, the term "financial asset" means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) "Good faith," for purposes of the obligation of good faith in the performance or enforcement of contracts or duties within this article, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(A) The security certificate specifies a person entitled to the security; and

(B) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(A) A clearing corporation; or

(B) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 28:8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer which:

(A) Is represented by a security certificate in bearer or registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(B) Is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(C)(i) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(ii) Is a medium for investment and by its terms expressly provides that it is a security governed by this article.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) Other definitions applying to this article and the sections in which they appear are:

(1) "Appropriate person".	§ 28:8-107.
(2) "Control".	§ 28:8-106.
(3) "Delivery".	§ 28:8-301.
(4) "Investment company security".	§ 28:8-103.
(5) "Issuer".	§ 28:8-201.
(6) "Overissue".	§ 28:8-210.
(7) "Protected purchaser".	§ 28:8-303.
(8) "Securities account".	§ 28:8-501.

(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

(d) The characterization of a person, business, or transaction for purposes of this article does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule. (Dec. 30, 1963, 77 Stat. 732, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-102; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(yy), 44 DCR 1271.)

Section references. — This section is referred to in §§ 28:4-104, 28:5-103, 28:8-210, 28:8-408, 28:8-501, 28:9-105, and 47-334.

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-240. — See note to § 28:8-101.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively.

Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Proprietary lease document. — A proprietary lease document is not the functional equivalent of a stock certificate or government or corporate bond commonly recognized as a medium for investment. First Sav. Bank v. Barclays Bank, App. D.C., 618 A.2d 134 (1992).

§ 28:8-103. Rules for determining whether certain obligations and interests are securities or financial assets.

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. The term "investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this article, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this article and not by Article 3, even though it also meets the requirements of that article. However, a negotiable instrument governed by Article 3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in § 28:9-115, is not a security or a financial asset. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-102 and 28:9-115.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-104. Acquisition of security or financial asset or interest therein.

(a) A person acquires a security or an interest therein, under this article, if:

(1) The person is a purchaser to whom a security is delivered pursuant to § 28:8-301; or

(2) The person acquires a security entitlement to the security pursuant to § 28:8-501.

(b) A person acquires a financial asset, other than a security, or an interest therein, under this article, if the person acquires a security entitlement to the financial asset.

(c) A person who acquires a security entitlement to a security or other financial asset has the rights specified in Part 5, but is a purchaser of any security, security entitlement, or other financial asset held by the securities intermediary only to the extent provided in § 28:8-503.

(d) Unless the context shows that a different meaning is intended, a person who is required by other law, regulation, rule, or agreement to transfer, deliver, present, surrender, exchange, or otherwise put in the possession of another person a security or financial asset satisfies that requirement by causing the other person to acquire an interest in the security or financial asset pursuant to subsection (a) or (b) of this section. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-408, 28:8-501, and 28:8-503.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-105. Notice of adverse claim.

(a) A person has notice of an adverse claim if:

(1) The person knows of the adverse claim;

(2) The person is aware of facts sufficient to indicate that there is a significant probability that the adverse claim exists and deliberately avoids information that would establish the existence of the adverse claim; or

(3) The person has a duty, imposed by statute or regulation, to investigate whether an adverse claim exists, and the investigation so required would establish the existence of the adverse claim.

(b) Having knowledge that a financial asset or interest therein is or has been transferred by a representative imposes no duty of inquiry into the rightfulness of a transaction and is not notice of an adverse claim. However, a person who knows that a representative has transferred a financial asset or interest therein in a transaction that is, or whose proceeds are being used, for the individual benefit of the representative or otherwise in breach of duty has notice of an adverse claim.

(c) An act or event that creates a right to immediate performance of the principal obligation represented by a security certificate or sets a date on or after which the certificate is to be presented or surrendered for redemption or exchange does not itself constitute notice of an adverse claim except in the case of a transfer more than:

(1) One year after a date set for presentment or surrender for redemption or exchange; or

(2) Six months after a date set for payment of money against presentation or surrender of the certificate, if money was available for payment on that date.

(d) A purchaser of a certificated security has notice of an adverse claim if the security certificate:

(1) Whether in bearer or registered form, has been indorsed "for collection" or "for surrender" or for some other purpose not involving transfer; or

(2) Is in bearer form and has on it an unambiguous statement that it is the property of a person other than the transferor, but the mere writing of a name on the certificate is not such a statement.

(e) Filing of a financing statement under Article 9 is not notice of an adverse claim to a financial asset. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-304; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-106. Control.

(a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c)(2) or (d)(2) of this section has control even if the registered owner in the case of subsection (c)(2) or the entitlement holder in the case of subsection (d)(2) of this section retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) of this section without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:1-105, 28:8-102, 28:8-107, 28:9-105, and 28:9-115.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-107. Whether indorsement, instruction, or entitlement order is effective.

(a) For the purposes of this article, the term "appropriate person" means:

(1) With respect to an indorsement, the person specified by a security certificate or by an effective special indorsement to be entitled to the security;

(2) With respect to an instruction, the registered owner of an uncertificated security;

(3) With respect to an entitlement order, the entitlement holder;

(4) If the person designated in paragraph (1), (2), or (3) of this subsection is deceased, the designated person's successor taking under other law or the designated person's personal representative acting for the estate of the decedent; or

(5) If the person designated in paragraph (1), (2), or (3) of this subsection lacks capacity, the designated person's guardian, conservator, or other similar representative who has power under other law to transfer the security or financial asset.

(b) An indorsement, instruction, or entitlement order is effective if:

(1) It is made by the appropriate person;

(2) It is made by a person who has power under the law of agency to transfer the security or financial asset on behalf of the appropriate person, including, in the case of an instruction or entitlement order, a person who has control under § 28:8-106(c)(2) or (d)(2); or

(3) The appropriate person has ratified it or is otherwise precluded from asserting its ineffectiveness.

(c) An indorsement, instruction, or entitlement order made by a representative is effective even if:

(1) The representative has failed to comply with a controlling instrument or with the law of the state having jurisdiction of the representative relationship, including any law requiring the representative to obtain court approval of the transaction; or

(2) The representative's action in making the indorsement, instruction, or entitlement order or using the proceeds of the transaction is otherwise a breach of duty.

(d) If a security is registered in the name of or specially indorsed to a person described as a representative, or if a securities account is maintained in the name of a person described as a representative, an indorsement, instruction, or entitlement order made by the person is effective even though the person is no longer serving in the described capacity.

(e) Effectiveness of an indorsement, instruction, or entitlement order is determined as of the date the indorsement, instruction, or entitlement order is made, and an indorsement, instruction, or entitlement order does not become ineffective by reason of any later change of circumstances. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-308; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; July 25, 1995, D.C. Law 11-30, § 7(g), 42 DCR 1547; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-102 and 28:8-402.

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-30. — See note to § 28:8-207.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-108. Warranties in direct holding.

(a) A person who transfers a certificated security to a purchaser for value warrants to the purchaser, and an indorser, if the transfer is by indorsement, warrants to any subsequent purchaser, that:

(1) The certificate is genuine and has not been materially altered;

(2) The transferor or indorser does not know of any fact that might impair the validity of the security;

(3) There is no adverse claim to the security;

(4) The transfer does not violate any restriction on transfer;

(5) If the transfer is by indorsement, the indorsement is made by an appropriate person, or if the indorsement is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(6) The transfer is otherwise effective and rightful.

(b) A person who originates an instruction for registration of transfer of an uncertificated security to a purchaser for value warrants to the purchaser that:

(1) The instruction is made by an appropriate person, or if the instruction is by an agent, the agent has actual authority to act on behalf of the appropriate person;

(2) The security is valid;

(3) There is no adverse claim to the security; and

(4) At the time the instruction is presented to the issuer:

(A) The purchaser will be entitled to the registration of transfer;

(B) The transfer will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction;

(C) The transfer will not violate any restriction on transfer; and

(D) The requested transfer will otherwise be effective and rightful.

(c) A person who transfers an uncertificated security to a purchaser for value and does not originate an instruction in connection with the transfer warrants that:

(1) The uncertificated security is valid;

(2) There is no adverse claim to the security;

(3) The transfer does not violate any restriction on transfer; and

(4) The transfer is otherwise effective and rightful.

(d) A person who indorses a security certificate warrants to the issuer that:

(1) There is no adverse claim to the security; and

(2) The indorsement is effective.

(e) A person who originates an instruction for registration of transfer of an uncertificated security warrants to the issuer that:

(1) The instruction is effective; and

(2) At the time the instruction is presented to the issuer the purchaser will be entitled to the registration of transfer.

(f) A person who presents a certificated security for registration of transfer or for payment or exchange warrants to the issuer that the person is entitled to the registration, payment, or exchange, but a purchaser for value and without notice of adverse claims to whom transfer is registered warrants only that the person has no knowledge of any unauthorized signature in a necessary indorsement.

(g) If a person acts as agent of another in delivering a certificated security to a purchaser, the identity of the principal was known to the person to whom the certificate was delivered, and the certificate delivered by the agent was received by the agent from the principal or received by the agent from another person at the direction of the principal, the person delivering the security certificate warrants only that the delivering person has authority to act for the principal and does not know of any adverse claim to the certificated security.

(h) A secured party who redelivers a security certificate received, or after payment and on order of the debtor delivers the security certificate to another person, makes only the warranties of an agent under subsection (g) of this section.

(i) Except as otherwise provided in subsection (g) of this section, a broker acting for a customer makes to the issuer and a purchaser the warranties provided in subsections (a) through (f) of this section. A broker that delivers a security certificate to its customer, or causes its customer to be registered as the owner of an uncertificated security, makes to the customer the warranties provided in subsection (a) or (b), and has the rights and privileges of a purchaser under this section. The warranties of and in favor of the broker acting as an agent are in addition to applicable warranties given by and in favor of the customer. (Dec. 30, 1963, 77 Stat. 737, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-306; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087; Apr. 20, 1999, D.C. Law 12-264, § 26(a), 46 DCR 2118.)

Section references. — This section is referred to in §§ 28:5-114, 28:8-109, 28:8-304, and 28:8-305.

Effect of amendments. — D.C. Law 12-264 inserted "of this section" twice in the first sentence of (i).

Legislative history of Law 11-240. — See note to § 28:8-101.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 28:8-109. Warranties in indirect holding.

(a) A person who originates an entitlement order to a securities intermediary warrants to the securities intermediary that:

(1) The entitlement order is made by an appropriate person, or if the entitlement order is by an agent, the agent has actual authority to act on behalf of the appropriate person; and

(2) There is no adverse claim to the security entitlement.

(b) A person who delivers a security certificate to a securities intermediary for credit to a securities account or originates an instruction with respect to an uncertificated security directing that the uncertificated security be credited to a securities account makes to the securities intermediary the warranties specified in § 28:8-108(a) or (b).

(c) If a securities intermediary delivers a security certificate to its entitlement holder or causes its entitlement holder to be registered as the owner of an uncertificated security, the securities intermediary makes to the entitlement

holder the warranties specified in § 28:8-108(a) or (b). (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-110. Applicability; choice of law.

(a) The local law of the issuer's jurisdiction, as specified in subsection (d) of this section, governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e) of this section, governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) For the purposes of this article, the term "issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of the District of Columbia may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5) of this section.

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (1) of this subsection, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2)

of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2) of this subsection and an account statement does not identify an office serving the entitlement holder's account as provided in paragraph (3) of this subsection, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-106; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:1-105 and 28:9-103.

Legislative history of Law 9-196. — See note to § 28:8-101.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-111. Clearing corporation rules.

A rule adopted by a clearing corporation governing rights and obligations among the clearing corporation and its participants in the clearing corporation is effective even if the rule conflicts with this article and affects another party who does not consent to the rule. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-112. Creditor's legal process.

(a) The interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy, except as otherwise provided in subsection (d) of this section. However, a certificated security for which the certificate has been surrendered to the issuer may be reached by a creditor by legal process upon the issuer.

(b) The interest of a debtor in an uncertificated security may be reached by a creditor only by legal process upon the issuer at its chief executive office in the United States, except as otherwise provided in subsection (d) of this section.

(c) The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except as otherwise provided in subsection (d) of this section.

(d) The interest of a debtor in a certificated security for which the certificate is in the possession of a secured party, or in an uncertificated security

registered in the name of a secured party, or a security entitlement maintained in the name of a secured party, may be reached by a creditor by legal process upon the secured party.

(e) A creditor whose debtor is the owner of a certificated security, uncertificated security, or security entitlement is entitled to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching the certificated security, uncertificated security, or security entitlement or in satisfying the claim by means allowed at law or in equity in regard to property that cannot readily be reached by other legal process. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-317; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-113. Statute of frauds inapplicable.

A contract or modification of a contract for the sale or purchase of a security is enforceable whether or not there is a writing signed or record authenticated by a party against whom enforcement is sought, even if the contract or modification is not capable of performance within one year of its making. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:1-206.

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-114. Evidentiary rules concerning certificated securities.

The following rules apply in an action on a certificated security against the issuer:

(1) Unless specifically denied in the pleadings, each signature on a security certificate or in a necessary indorsement is admitted.

(2) If the effectiveness of a signature is put in issue, the burden of establishing effectiveness is on the party claiming under the signature, but the signature is presumed to be genuine or authorized.

(3) If signatures on a security certificate are admitted or established, production of the certificate entitles a holder to recover on it unless the defendant establishes a defense or a defect going to the validity of the security.

(4) If it is shown that a defense or defect exists, the plaintiff has the burden of establishing that the plaintiff or some person under whom the plaintiff claims is a person against whom the defense or defect cannot be asserted. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-105; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-115. Securities intermediary and others not liable to adverse claimant.

A securities intermediary that has transferred a financial asset pursuant to an effective entitlement order, or a broker or other agent or bailee that has dealt with a financial asset at the direction of its customer or principal, is not liable to a person having an adverse claim to the financial asset, unless the securities intermediary, or broker or other agent or bailee:

(1) Took the action after it had been served with an injunction, restraining order, or other legal process enjoining it from doing so, issued by a court of competent jurisdiction, and had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(2) Acted in collusion with the wrongdoer in violating the rights of the adverse claimant; or

(3) In the case of a security certificate that has been stolen, acted with notice of the adverse claim. (Dec. 30, 1963, 77 Stat. 741, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-318; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

§ 28:8-116. Securities intermediary as purchaser for value.

A securities intermediary that receives a financial asset and establishes a security entitlement to the financial asset in favor of an entitlement holder is a purchaser for value of the financial asset. A securities intermediary that acquires a security entitlement to a financial asset from another securities intermediary acquires the security entitlement for value if the securities intermediary acquiring the security entitlement establishes a security entitlement to the financial asset in favor of an entitlement holder. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-101.

Part 2. Issue and Issuer.

§ 28:8-201. Issuer.

(a) With respect to an obligation on or a defense to a security, an "issuer" includes a person that:

(1) Places or authorizes the placing of its name on a security certificate, other than as authenticating trustee, registrar, transfer agent, or the like, to evidence a share, participation, or other interest in its property or in an enterprise, or to evidence its duty to perform an obligation represented by the certificate;

(2) Creates a share, participation, or other interest in its property or in an enterprise, or undertakes an obligation, that is an uncertificated security;

(3) Directly or indirectly creates a fractional interest in its rights or property, if the fractional interest is represented by a security certificate; or

(4) Becomes responsible for, or in place of, another person described as an issuer in this section.

(b) With respect to an obligation on or defense to a security, a guarantor is an issuer to the extent of its guaranty, whether or not its obligation is noted on a security certificate.

(c) With respect to a registration of a transfer, issuer means a person on whose behalf transfer books are maintained. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-201; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:8-202. Issuer's responsibility and defenses; notice of defect or defense.

(a) Even against a purchaser for value and without notice, the terms of a certificated security include terms stated on the certificate and terms made part of the security by reference on the certificate to another instrument, indenture, or document or to a constitution, statute, ordinance, rule, regulation, order, or the like, to the extent the terms referred to do not conflict with terms stated on the certificate. A reference under this subsection does not of itself charge a purchaser for value with notice of a defect going to the validity of the security, even if the certificate expressly states that a person accepting it admits notice. The terms of an uncertificated security include those stated in any instrument, indenture, or document or in a constitution, statute, ordinance, rule, regulation, order, or the like, pursuant to which the security is issued.

(b) The following rules apply if an issuer asserts that a security is not valid:

(1) A security other than one issued by a government or governmental subdivision, agency, or instrumentality, even though issued with a defect going to its validity, is valid in the hands of a purchaser for value and without notice of the particular defect unless the defect involves a violation of a constitutional provision. In that case, the security is valid in the hands of a purchaser for value and without notice of the defect, other than one who takes by original issue.

(2) Paragraph (1) of this subsection applies to an issuer that is a government or governmental subdivision, agency, or instrumentality only if there has been substantial compliance with the legal requirements governing the issue or the issuer has received a substantial consideration for the issue as a whole or for the particular security and a stated purpose of the issue is one for which the issuer has power to borrow money or issue the security.

(c) Except as otherwise provided in § 28:8-205, lack of genuineness of a certificated security is a complete defense, even against a purchaser for value and without notice.

(d) All other defenses of the issuer of a security, including nondelivery and conditional delivery of a certificated security, are ineffective against a purchaser for value who has taken the certificated security without notice of the particular defense.

(e) This section does not affect the right of a party to cancel a contract for a security "when, as and if issued" or "when distributed" in the event of a material change in the character of the security that is the subject of the contract or in the plan or arrangement pursuant to which the security is to be issued or distributed.

(f) If a security is held by a securities intermediary against whom an entitlement holder has a security entitlement with respect to the security, the issuer may not assert any defense that the issuer could not assert if the entitlement holder held the security directly. (Dec. 30, 1963, 77 Stat. 734, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-202; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-203. Staleness as notice of defect or defense.

After an act or event, other than a call that has been revoked, creating a right to immediate performance of the principal obligation represented by a certificated security or setting a date on or after which the security is to be presented or surrendered for redemption or exchange, a purchaser is charged with notice of any defect in its issue or defense of the issuer, if the act or event:

(1) Requires the payment of money, the delivery of a certificated security, the registration of transfer of an uncertificated security, or any of them on presentation or surrender of the security certificate, the money or security is available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date; or

(2) Is not covered by paragraph (1) of this subsection and the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which performance became due. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-203; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-204. Effect of issuer's restriction on transfer.

A restriction on transfer of a security imposed by the issuer, even if otherwise lawful, is ineffective against a person without knowledge of the restriction unless:

(1) The security is certificated and the restriction is noted conspicuously on the security certificate; or

(2) The security is uncertificated and the registered owner has been notified of the restriction. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-204; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-205. Effect of unauthorized signature on security certificate.

An unauthorized signature placed on a security certificate before or in the course of issue is ineffective, but the signature is effective in favor of a purchaser for value of the certificated security if the purchaser is without notice of the lack of authority and the signing has been done by:

(1) An authenticating trustee, registrar, transfer agent, or other person entrusted by the issuer with the signing of the security certificate or of similar security certificates, or the immediate preparation for signing of any of them; or

(2) An employee of the issuer, or of any of the persons listed in paragraph (1) of this subsection, entrusted with responsible handling of the security certificate. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-205; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-206. Completion or alteration of security certificate.

(a) If a security certificate contains the signatures necessary to its issue or transfer but is incomplete in any other respect:

(1) Any person may complete it by filling in the blanks as authorized; and

(2) Even if the blanks are incorrectly filled in, the security certificate as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(b) A complete security certificate that has been improperly altered, even if fraudulently, remains enforceable, but only according to its original terms. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-206; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-207. Rights and duties of issuer with respect to registered owners.

(a) Before due presentment for registration of transfer of a certificated security in registered form or of an instruction requesting registration of transfer of an uncertificated security, the issuer or indenture trustee may treat

the registered owner as the person exclusively entitled to vote, receive notifications, and otherwise exercise all the rights and powers of an owner.

(b) This article does not affect the liability of the registered owner of a security for a call, assessment, or the like. (Dec. 30, 1963, 77 Stat. 735, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-207; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; July 25, 1995, D.C. Law 11-30, § 7(f), 42 DCR 1547; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-208. Effect of signature of authenticating trustee, registrar, or transfer agent.

(a) A person signing a security certificate as authenticating trustee, registrar, transfer agent, or the like, warrants to a purchaser for value of the certificated security, if the purchaser is without notice of a particular defect, that:

(1) The certificate is genuine;

(2) The person's own participation in the issue of the security is within the person's capacity and within the scope of the authority received by the person from the issuer; and

(3) The person has reasonable grounds to believe that the certificated security is in the form and within the amount the issuer is authorized to issue.

(b) Unless otherwise agreed, a person signing under subsection (a) of this section does not assume responsibility for the validity of the security in other respects. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-208; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-209. Issuer's lien.

A lien in favor of an issuer upon a certificated security is valid against a purchaser only if the right of the issuer to the lien is noted conspicuously on the security certificate. (Dec. 30, 1963, 77 Stat. 733, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-103; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-201.

§ 28:8-210. Overissue.

(a) For the purposes of this section the term "overissue" means the issue of securities in excess of the amount the issuer has corporate power to issue, but an overissue does not occur if appropriate action has cured the overissue.

(b) Except as otherwise provided in subsections (c) and (d) of this section, the provisions of this article which validate a security or compel its issue or

reissue do not apply to the extent that validation, issue, or reissue would result in overissue.

(c) If an identical security not constituting an overissue is reasonably available for purchase, a person entitled to issue or validation may compel the issuer to purchase the security and deliver it if certificated or register its transfer if uncertificated, against surrender of any security certificate the person holds.

(d) If a security is not reasonably available for purchase, a person entitled to issue or validation may recover from the issuer the price the person or the last purchaser for value paid for it with interest from the date of the person's demand. (Dec. 30, 1963, 77 Stat. 733, Pub.L. 88-243, § 1; 1973 Ed., § 28:8-104, Mar. 16, 1973, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-404, and 28:8-405.

Legislative history of Law 11-240. — See note to § 28:8-201.

Part 3. Transfer of Certificated and Uncertificated Securities.

§ 28:8-301. Delivery.

(a) Delivery of a certificated security to a purchaser occurs when:

(1) The purchaser acquires possession of the security certificate;

(2) Another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(3) A securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and has been specially indorsed to the purchaser by an effective indorsement.

(b) Delivery of an uncertificated security to a purchaser occurs when:

(1) The issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(2) Another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-302; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-104, and 28:9-105.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:8-302. Rights of purchaser.

(a) Except as otherwise provided in subsections (b) and (c) of this section, upon delivery of a certificated or uncertificated security to a purchaser, the purchaser acquires all rights in the security that the transferor had or had power to transfer.

(b) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(c) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-301; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 11-240. — See note to § 28:8-301.

§ 28:8-303. Protected purchaser.

(a) For the purposes of this article, the term "protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

(2) Does not have notice of any adverse claim to the security; and

(3) Obtains control of the certificated or uncertificated security.

(b) In addition to acquiring the rights of a purchaser, a protected purchaser also acquires its interest in the security free of any adverse claim. (Dec. 30, 1963, 77 Stat. 736, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-302; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-102.

Legislative history of Law 11-240. — See note to § 28:8-301.

§ 28:8-304. Indorsement.

(a) An indorsement may be in blank or special. An indorsement in blank includes an indorsement to bearer. A special indorsement specifies to whom a security is to be transferred or who has power to transfer it. A holder may convert a blank indorsement to a special indorsement.

(b) An indorsement purporting to be only of part of a security certificate representing units intended by the issuer to be separately transferable is effective to the extent of the indorsement.

(c) An indorsement, whether special or in blank, does not constitute a transfer until delivery of the certificate on which it appears or, if the indorsement is on a separate document, until delivery of both the document and the certificate.

(d) If a security certificate in registered form has been delivered to a purchaser without a necessary indorsement, the purchaser may become a protected purchaser only when the indorsement is supplied. However, against a transferor, a transfer is complete upon delivery and the purchaser has a specifically enforceable right to have any necessary indorsement supplied.

(e) An indorsement of a security certificate in bearer form may give notice of an adverse claim to the certificate, but it does not otherwise affect a right to registration that the holder possesses.

(f) Unless otherwise agreed, a person making an indorsement assumes only the obligations provided in § 28:8-108 and not an obligation that the security will be honored by the issuer. (Dec. 30, 1963, 77 Stat. 738, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-308, Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; July 25, 1995, D.C. Law 11-30, § 7(g), 42 DCR 1547; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-301.

§ 28:8-305. Instruction.

(a) If an instruction has been originated by an appropriate person but is incomplete in any other respect, any person may complete it as authorized and the issuer may rely on it as completed, even though it has been completed incorrectly.

(b) Unless otherwise agreed, a person initiating an instruction assumes only the obligations imposed by § 28:8-108 and not an obligation that the security will be honored by the issuer. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-301.

§ 28:8-306. Effect of guaranteeing signature, indorsement, or instruction.

(a) A person who guarantees a signature of an indorser of a security certificate warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to indorse, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person; and

(3) The signer had legal capacity to sign.

(b) A person who guarantees a signature of the originator of an instruction warrants that at the time of signing:

(1) The signature was genuine;

(2) The signer was an appropriate person to originate the instruction, or if the signature is by an agent, the agent had actual authority to act on behalf of the appropriate person, if the person specified in the instruction as the registered owner was, in fact, the registered owner, as to which fact the signature guarantor does not make a warranty; and

(3) The signer had legal capacity to sign.

(c) A person who specially guarantees the signature of an originator of an instruction makes the warranties of a signature guarantor under subsection (b) of this section and also warrants that at the time the instruction is presented to the issuer:

(1) The person specified in the instruction as the registered owner of the uncertificated security will be the registered owner; and

(2) The transfer of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

(d) A guarantor under subsections (a) and (b) of this section or a special guarantor under subsection (c) of this section does not otherwise warrant the rightfulness of the transfer.

(e) A person who guarantees an indorsement of a security certificate makes the warranties of a signature guarantor under subsection (a) of this section and also warrants the rightfulness of the transfer in all respects.

(f) A person who guarantees an instruction requesting the transfer of an uncertificated security makes the warranties of a special signature guarantor under subsection (c) of this section and also warrants the rightfulness of the transfer in all respects.

(g) An issuer may not require a special guaranty of signature, a guaranty of indorsement, or a guaranty of instruction as a condition to registration of transfer.

(h) The warranties under this section are made to a person taking or dealing with the security in reliance on the guaranty, and the guarantor is liable to the person for loss resulting from their breach. An indorser or originator of an instruction whose signature, indorsement, or instruction has been guaranteed is liable to a guarantor for any loss suffered by the guarantor as a result of breach of the warranties of the guarantor. (Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-312; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-301.

§ 28:8-307. Purchaser's right to requisites for registration of transfer.

Unless otherwise agreed, the transferor of a security on due demand shall supply the purchaser with proof of authority to transfer or with any other requisite necessary to obtain registration of the transfer of the security, but if the transfer is not for value, a transferor need not comply unless the purchaser pays the necessary expenses. If the transferor fails within a reasonable time to comply with the demand, the purchaser may reject or rescind the transfer. (Dec. 30, 1963, 77 Stat. 740, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-316; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-301.

Part 4. Registration.

§ 28:8-401. Duty of issuer to register transfer.

(a) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security, the issuer shall register the transfer as requested if:

(1) Under the terms of the security the person seeking registration of transfer is eligible to have the security registered in its name;

(2) The indorsement or instruction is made by the appropriate person or by an agent who has actual authority to act on behalf of the appropriate person;

(3) Reasonable assurance is given that the indorsement or instruction is genuine and authorized (§ 28:8-402);

(4) Any applicable law relating to the collection of taxes has been complied with;

(5) The transfer does not violate any restriction on transfer imposed by the issuer in accordance with § 28:8-204;

(6) A demand that the issuer not register transfer has not become effective under § 28:8-403, or the issuer has complied with § 28:8-403(b) but no legal process or indemnity bond is obtained as provided in § 28:8-403(d); and

(7) The transfer is in fact rightful or is to a protected purchaser.

(b) If an issuer is under a duty to register a transfer of a security, the issuer is liable to a person presenting a certificated security or an instruction for registration or to the person's principal for loss resulting from unreasonable delay in registration or failure or refusal to register the transfer. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-401; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:8-402. Assurance that indorsement or instruction is effective.

(a) An issuer may require the following assurance that each necessary indorsement or each instruction is genuine and authorized:

(1) In all cases, a guaranty of the signature of the person making an indorsement or originating an instruction including, in the case of an instruction, reasonable assurance of identity;

(2) If the indorsement is made or the instruction is originated by an agent, appropriate assurance of actual authority to sign;

(3) If the indorsement is made or the instruction is originated by a fiduciary pursuant to § 28:8-107(a)(4) or (a)(5), appropriate evidence of appointment or incumbency;

(4) If there is more than one fiduciary, reasonable assurance that all who are required to sign have done so; and

(5) If the indorsement is made or the instruction is originated by a person not covered by another provision of this subsection, assurance appropriate to the case corresponding as nearly as may be to the provisions of this subsection.

(b) An issuer may elect to require reasonable assurance beyond that specified in this section.

(c) For the purposes of this section, the term:

(1) "Guaranty of the signature" means a guaranty signed by or on behalf of a person reasonably believed by the issuer to be responsible. An issuer may adopt standards with respect to responsibility if they are not manifestly unreasonable.

(2) "Appropriate evidence of appointment or incumbency" means:

(A) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of the court or an officer thereof and dated within 60 days before the date of presentation for transfer; or

(B) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by an issuer to be responsible or, in the absence of that document or certificate, other evidence the issuer reasonably considers appropriate. (Dec. 30, 1963, 77 Stat. 742, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-402; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-401.

Legislative history of Law 11-240. — See note to § 28:8-401.

§ 28:8-403. Demand that issuer not register transfer.

(a) A person who is an appropriate person to make an indorsement or originate an instruction may demand that the issuer not register transfer of a security by communicating to the issuer a notification that identifies the registered owner and the issue of which the security is a part and provides an address for communications directed to the person making the demand. The demand is effective only if it is received by the issuer at a time and in a manner affording the issuer reasonable opportunity to act on it.

(b) If a certificated security in registered form is presented to an issuer with a request to register transfer or an instruction is presented to an issuer with a request to register transfer of an uncertificated security after a demand that the issuer not register transfer has become effective, the issuer shall promptly communicate to (i) the person who initiated the demand at the address provided in the demand, and (ii) the person who presented the security for registration of transfer or initiated the instruction requesting registration of transfer a notification stating that:

(1) The certificated security has been presented for registration of transfer or the instruction for registration of transfer of the uncertificated security has been received;

(2) A demand that the issuer not register transfer had previously been received; and

(3) The issuer will withhold registration of transfer for a period of time stated in the notification in order to provide the person who initiated the demand an opportunity to obtain legal process or an indemnity bond.

(c) The period described in subsection (b)(3) of this section may not exceed 30 days after the date of communication of the notification. A shorter period may be specified by the issuer if it is not manifestly unreasonable.

(d) An issuer is not liable to a person who initiated a demand that the issuer not register transfer for any loss the person suffers as a result of registration of a transfer pursuant to an effective indorsement or instruction if the person who initiated the demand does not, within the time stated in the issuer's communication, either:

(1) Obtain an appropriate restraining order, injunction, or other process from a court of competent jurisdiction enjoining the issuer from registering the transfer; or

(2) File with the issuer an indemnity bond, sufficient in the issuer's judgment to protect the issuer and any transfer agent, registrar, or other agent of the issuer involved from any loss it or they may suffer by refusing to register the transfer.

(e) This section does not relieve an issuer from liability for registering transfer pursuant to an indorsement or instruction that was not effective. (Dec. 30, 1963, 77 Stat. 743, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-403; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-401 and 28:8-404.

Legislative history of Law 11-240. — See note to § 28:8-401.

§ 28:8-404. Wrongful registration.

(a) Except as otherwise provided in § 28:8-406, an issuer is liable for wrongful registration of transfer if the issuer has registered a transfer of a security to a person not entitled to it, and the transfer was registered:

(1) Pursuant to an ineffective indorsement or instruction;

(2) After a demand that the issuer not register transfer became effective under § 28:8-403(a) and the issuer did not comply with § 28:8-403(b);

(3) After the issuer had been served with an injunction, restraining order, or other legal process enjoining it from registering the transfer, issued by a court of competent jurisdiction, and the issuer had a reasonable opportunity to act on the injunction, restraining order, or other legal process; or

(4) By an issuer acting in collusion with the wrongdoer.

(b) An issuer that is liable for wrongful registration of transfer under subsection (a) of this section on demand shall provide the person entitled to the security with a like certificated or uncertificated security, and any payments or distributions that the person did not receive as a result of the wrongful registration. If an overissue would result, the issuer's liability to provide the person with a like security is governed by § 28:8-210.

(c) Except as otherwise provided in subsection (a) of this section or in a law relating to the collection of taxes, an issuer is not liable to an owner or other person suffering loss as a result of the registration of a transfer of a security if registration was made pursuant to an effective indorsement or instruction.

(Dec. 30, 1963, 77 Stat. 739, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-311; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-406.

Legislative history of Law 11-240. — See note to § 28:8-401.

§ 28:8-405. Replacement of lost, destroyed, or wrongfully taken security certificate.

(a) If an owner of a certificated security, whether in registered or bearer form, claims that the certificate has been lost, destroyed, or wrongfully taken, the issuer shall issue a new certificate if the owner:

(1) So requests before the issuer has notice that the certificate has been acquired by a protected purchaser;

(2) Files with the issuer a sufficient indemnity bond; and

(3) Satisfies other reasonable requirements imposed by the issuer.

(b) If, after the issue of a new security certificate, a protected purchaser of the original certificate presents it for registration of transfer, the issuer shall register the transfer unless an overissue would result. In that case, the issuer's liability is governed by § 28:8-210. In addition to any rights on the indemnity bond, an issuer may recover the new certificate from a person to whom it was issued or any person taking under that person, except a protected purchaser. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-405; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-406.

Legislative history of Law 11-240. — See note to § 28:8-401.

§ 28:8-406. Obligation to notify issuer of lost, destroyed, or wrongfully taken security certificate.

If a security certificate has been lost, apparently destroyed, or wrongfully taken, and the owner fails to notify the issuer of that fact within a reasonable time after the owner has notice of it and the issuer registers a transfer of the security before receiving notification, the owner may not assert against the issuer a claim for registering the transfer under § 28:8-404 or a claim to a new security certificate under § 28:8-405. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:4-404.

Legislative history of Law 11-240. — See note to § 28:8-401.

§ 28:8-407. Authenticating trustee, transfer agent, and registrar.

A person acting as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of a transfer of its securities, in the issue of new security certificates or uncertificated securities, or in the cancellation of surrendered security certificates has the same obligation to the holder or owner of a certificated or uncertificated security with regard to the particular

functions performed as the issuer has in regard to those functions. (Dec. 30, 1963, 77 Stat. 744, Pub. L. 88-243, § 1; 1973 Ed., § 28:8-406; Mar. 16, 1993, D.C. Law 9-196, § 4, 39 DCR 9165; renumbered and amended, Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-401.

Part 5. Security Entitlements.

§ 28:8-501. Securities account; acquisition of security entitlement from securities intermediary.

(a) For the purposes of this article, the term "securities account" means an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person acquires a security entitlement if a securities intermediary:

(1) Indicates by book entry that a financial asset has been credited to the person's securities account;

(2) Receives a financial asset from the person or acquires a financial asset for the person and, in either case, accepts it for credit to the person's securities account; or

(3) Becomes obligated under other law, regulation, or rule to credit a financial asset to the person's securities account.

(c) If a condition of subsection (b) of this section has been met, a person has a security entitlement even though the securities intermediary does not itself hold the financial asset.

(d) If a securities intermediary holds a financial asset for another person, and the financial asset is registered in the name of, payable to the order of, or specially indorsed to the other person, and has not been indorsed to the securities intermediary or in blank, the other person is treated as holding the financial asset directly rather than as having a security entitlement with respect to the financial asset.

(e) Issuance of a security is not establishment of a security entitlement. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-102, 28:8-104, and 28:8-502.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:8-502. Assertion of adverse claim against entitlement holder.

An action based on an adverse claim to a financial asset, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who acquires a security entitlement under § 28:8-501 for value and without notice of the adverse claim. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-510.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-503. Property interest of entitlement holder in financial asset held by securities intermediary.

(a) To the extent necessary for a securities intermediary to satisfy all security entitlements with respect to a particular financial asset, all interests in that financial asset held by the securities intermediary are held by the securities intermediary for the entitlement holders, are not property of the securities intermediary, and are not subject to claims of creditors of the securities intermediary, except as otherwise provided in § 28:8-511.

(b) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section is a pro rata property interest in all interests in that financial asset held by the securities intermediary, without regard to the time the entitlement holder acquired the security entitlement or the time the securities intermediary acquired the interest in that financial asset.

(c) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against the securities intermediary only by exercise of the entitlement holder's rights under §§ 28:8-505 through 28:8-508.

(d) An entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section may be enforced against a purchaser of the financial asset or interest therein only if:

(1) Insolvency proceedings have been initiated by or against the securities intermediary;

(2) The securities intermediary does not have sufficient interests in the financial asset to satisfy the security entitlements of all of its entitlement holders to that financial asset;

(3) The securities intermediary violated its obligations under § 28:8-504 by transferring the financial asset or interest therein to the purchaser; and

(4) The purchaser is not protected under subsection (f) of this section.

(e) The trustee or other liquidator, acting on behalf of all entitlement holders having security entitlements with respect to a particular financial asset, may recover the financial asset, or interest therein, from the purchaser. If the trustee or other liquidator elects not to pursue that right, an entitlement holder whose security entitlement remains unsatisfied has the right to recover its interest in the financial asset from the purchaser.

(f) An action based on the entitlement holder's property interest with respect to a particular financial asset under subsection (a) of this section,

whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of a financial asset or interest therein who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations under § 28:8-504. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-104.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-504. Duty of securities intermediary to maintain financial asset.

(a) A securities intermediary shall promptly obtain and thereafter maintain a financial asset in a quantity corresponding to the aggregate of all security entitlements it has established in favor of its entitlement holders with respect to that financial asset. The securities intermediary may maintain those financial assets directly or through one or more other securities intermediaries.

(b) Except to the extent otherwise agreed by its entitlement holder, a securities intermediary may not grant any security interests in a financial asset it is obligated to maintain pursuant to subsection (a) of this section.

(c) A securities intermediary satisfies the duty in subsection (a) of this section if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to obtain and maintain the financial asset.

(d) This section does not apply to a clearing corporation that is itself the obligor of an option or similar obligation to which its entitlement holders have security entitlements. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-503 and 28:8-509.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-505. Duty of securities intermediary with respect to payments and distributions.

(a) A securities intermediary shall take action to obtain a payment or distribution made by the issuer of a financial asset. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to attempt to obtain the payment or distribution.

(b) A securities intermediary is obligated to its entitlement holder for a payment or distribution made by the issuer of a financial asset if the payment or distribution is received by the securities intermediary. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-503 and 28:8-509.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-506. Duty of securities intermediary to exercise rights as directed by entitlement holder.

A securities intermediary shall exercise rights with respect to a financial asset if directed to do so by an entitlement holder. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary either places the entitlement holder in a position to exercise the rights directly or exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-503 and 28:8-509.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-507. Duty of securities intermediary to comply with entitlement order.

(a) A securities intermediary shall comply with an entitlement order if the entitlement order is originated by the appropriate person, the securities intermediary has had reasonable opportunity to assure itself that the entitlement order is genuine and authorized, and the securities intermediary has had reasonable opportunity to comply with the entitlement order. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts with respect to the duty as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to comply with the entitlement order.

(b) If a securities intermediary transfers a financial asset pursuant to an ineffective entitlement order, the securities intermediary shall reestablish a security entitlement in favor of the person entitled to it, and pay or credit any payments or distributions that the person did not receive as a result of the wrongful transfer. If the securities intermediary does not reestablish a security entitlement, the securities intermediary is liable to the entitlement holder for damages. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-503 and 28:8-509.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-508. Duty of securities intermediary to change entitlement holder's position to other form of security holding.

A securities intermediary shall act at the direction of an entitlement holder to change a security entitlement into another available form of holding for

which the entitlement holder is eligible, or to cause the financial asset to be transferred to a securities account of the entitlement holder with another securities intermediary. A securities intermediary satisfies the duty if:

(1) The securities intermediary acts as agreed upon by the entitlement holder and the securities intermediary; or

(2) In the absence of agreement, the securities intermediary exercises due care in accordance with reasonable commercial standards to follow the direction of the entitlement holder. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:8-503 and 28:8-509.

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-509. Specification of duties of securities intermediary by other statute or regulation; manner of performance of duties of securities intermediary and exercise of rights of entitlement holder.

(a) If the substance of a duty imposed upon a securities intermediary by §§ 28:8-504 through 28:8-508 is the subject of other statute, regulation, or rule, compliance with that statute, regulation, or rule satisfies the duty.

(b) To the extent that specific standards for the performance of the duties of a securities intermediary or the exercise of the rights of an entitlement holder are not specified by other statute, regulation, or rule or by agreement between the securities intermediary and entitlement holder, the securities intermediary shall perform its duties and the entitlement holder shall exercise its rights in a commercially reasonable manner.

(c) The obligation of a securities intermediary to perform the duties imposed by §§ 28:504 through 28:8-508 is subject to:

(1) Rights of the securities intermediary arising out of a security interest under a security agreement with the entitlement holder or otherwise; and

(2) Rights of the securities intermediary under other law, regulation, rule, or agreement to withhold performance of its duties as a result of unfulfilled obligations of the entitlement holder to the securities intermediary.

(d) Sections 28:8-504 through 28:8-508 do not require a securities intermediary to take any action that is prohibited by other statute, regulation, or rule. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-510. Rights of purchaser of security entitlement from entitlement holder.

(a) An action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the

purchaser gives value, does not have notice of the adverse claim, and obtains control.

(b) If an adverse claim could not have been asserted against an entitlement holder under § 28:8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(c) In a case not covered by the priority rules in § 28:9-101 et seq., a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. Purchasers who have control rank equally, except that a securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — See note to § 28:8-501.

§ 28:8-511. Priority among security interests and entitlement holders.

(a) Except as otherwise provided in subsections (b) and (c) of this section, if a securities intermediary does not have sufficient interests in a particular financial asset to satisfy both its obligations to entitlement holders who have security entitlements to that financial asset and its obligation to a creditor of the securities intermediary who has a security interest in that financial asset, the claims of entitlement holders, other than the creditor, have priority over the claim of the creditor.

(b) A claim of a creditor of a securities intermediary who has a security interest in a financial asset held by a securities intermediary has priority over claims of the securities intermediary's entitlement holders who have security entitlements with respect to that financial asset if the creditor has control over the financial asset.

(c) If a clearing corporation does not have sufficient financial assets to satisfy both its obligations to entitlement holders who have security entitlements with respect to a financial asset and its obligation to a creditor of the clearing corporation who has a security interest in that financial asset, the claim of the creditor has priority over the claims of entitlement holders. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Section references. — This section is referred to in § 28:8-503.

Legislative history of Law 11-240. — See note to § 28:8-501.

Part 6. Transitional Provisions.

§ 28:8-601. Savings clause.

(a) This article does not affect an action or proceeding commenced before this subtitle takes effect.

(b) If a security interest in a security is perfected at the date this subtitle takes effect, and the action by which the security interest was perfected would suffice to perfect a security interest under this article, no further action is

required to continue perfection. If a security interest in a security is perfected at the date this article takes effect but the action by which the security interest was perfected would not suffice to perfect a security interest under this article, the security interest remains perfected for a period of four months after the effective date and continues perfected thereafter if appropriate action to perfect under this article is taken within that period. If a security interest is perfected at the date this article takes effect and the security interest can be perfected by filing under this article, a financing statement signed by the secured party instead of the debtor may be filed within that period to continue perfection or thereafter to perfect. (Apr. 9, 1997, D.C. Law 11-240, § 2, 44 DCR 1087.)

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

References in text. — The phrase "before this subtitle takes effect," which appears in subsection (a), is a reference to the effective date of the Act of December 30, 1963, 77 Stat. 631, Pub. L. 88-243. Pursuant to § 16 of Pub. L. 88-243, the act became effective on January 1, 1965.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.

Part 1. Short Title, Applicability and Definitions.

Sec.

Part 2. Validity of Security Agreement and Rights of Parties Thereto.

Part 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority.

Part 4. Filing.

Part 1. Short Title, Applicability and Definitions.

§ 28:9-101. Short title.

Cited in Wolf v. Sherman, App. D.C., 682 A.2d 194 (1996).

§ 28:9-103. Perfection of security interests in multiple state transactions.

(1) *Documents, instruments, letters of credit and ordinary goods.* —

(a) This subsection applies to documents and instruments, rights to proceeds of written letters of credit, and goods other than those covered by a certificate of title described in subsection (2) of this section, mobile goods described in subsection (3) of this section, and minerals described in subsection (5) of this section.

* * * * *

(7) *Investment property.* —

(a) This subsection applies to investment property.

(b) Except as otherwise provided in paragraph (f) of this section, during the time that a security certificate is located in a jurisdiction, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in the certificated security represented thereby are governed by the local law of that jurisdiction.

(c) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in an uncertificated security are governed by the local law of the issuer's jurisdiction as specified in § 28:8-110(d).

(d) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or non-perfection, and the priority of a security interest in a security entitlement or securities account are governed by the local law of the securities intermediary's jurisdiction as specified in § 28:8-110(e).

(e) Except as otherwise provided in paragraph (f) of this subsection, perfection of a security interest, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account are governed by the local law of the commodity intermediary's jurisdiction. The following rules determine a "commodity intermediary's jurisdiction" for purposes of this paragraph:

(i) If an agreement between the commodity intermediary and commodity customer specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(ii) If an agreement between the commodity intermediary and commodity customer does not specify the governing law as provided in subparagraph (i) of this paragraph, but expressly specifies that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(iii) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs

(i) or (ii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the commodity customer's account.

(iv) If an agreement between the commodity intermediary and commodity customer does not specify a jurisdiction as provided in subparagraphs (i) or (ii) of this paragraph and an account statement does not identify an office serving the commodity customer's account as provided in subparagraph (iii) of this paragraph, the commodity intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the commodity intermediary.

(f) Perfection of a security interest by filing, automatic perfection of a security interest in investment property granted by a broker or securities intermediary, and automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary are governed by the local law of the jurisdiction in which the debtor is located. (Dec. 30, 1963, 77 Stat. 747, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-103; Mar. 16, 1982, D.C. Law 4-85, § 11, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(a), 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-238, § 3(d), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(f), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-238 inserted "letters of credit" in the subsection (1) catchline; and substituted "instruments, rights to proceeds of written letter of credit, and" for "and instruments and to" in (1)(a).

D.C. Law 11-240 added (7).

Legislative history of Law 11-238. — Law 11-238, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-574, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to both Houses of Congress for its review. D.C. Law 11-238 became effective on April 9, 1997.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

§ 28:9-104. Transactions excluded from article.

This article does not apply:

* * * * *

(l) to a transfer of an interest in any deposit account (section 28:9-105 (1)), except as provided with respect to proceeds (section 28:9-306) and priorities in proceeds (section 28:9-312); or

(m) to a transfer of an interest in a letter of credit other than the rights to proceeds of a written letter of credit. (Dec. 30, 1963, 77 Stat. 748, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-104; Mar. 16, 1982, D.C. Law 4-85, § 12, 29 DCR 309; Apr. 9, 1997, D.C. Law 11-238, § 3(e), 44 DCR 923.)

Effect of amendments. — D.C. Law 11-238 added (m).

Legislative history of Law 11-238. — See note to § 28:9-103.

§ 28:9-105. Definitions and index of definitions.

(1) In this article unless the context otherwise requires:

* * * * *

(h) "Goods" includes all things which are movable at the time the security interest attaches or which are fixtures (section 28:9-313), but does not include money, documents, instruments, investment property, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" also includes standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young of animals, and growing crops;

(i) "Instrument" means a negotiable instrument (defined in section 28:3-104), or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of a type which is in ordinary course of business transferred by delivery with any necessary indorsement or assignment. The term does not include investment property.

* * * * *

(2) Other definitions applying to this article and the sections in which they appear are:

"Account." § 28:9-106.
"Attach." § 28:9-203.
"Commodity contract." § 28:9-115.
"Commodity customer." § 28:9-115.
"Commodity intermediary." § 28:9-115.
"Construction mortgage." § 28:9-313(1).
"Consumer goods." § 28:9-109(1).
"Control." § 28:9-115.
"Equipment." § 28:9-109(2).
"Farm products." § 28:9-109(3).
"Fixture." § 28:9-313(1).
"Fixture filing." § 28:9-313(1).
"General intangibles." § 28:9-106.
"Inventory." § 28:9-109(4).
"Investment property." § 28:9-115.
"Lien creditor." § 28:9-301(3).
"Proceeds." § 28:9-306(1).
"Purchase money security interest." § 28:9-107.
"United States." § 28:9-103; and

(3) The following definitions in other articles apply to this article:

"Broker." § 28:8-102.
"Certificated security." § 28:8-102.
"Check." § 28:3-104.
"Clearing corporation." § 28:8-102.
"Contract for sale." § 28:2-106.
"Control." § 28:8-106.
"Delivery." § 28:8-301.

"Entitlement holder." § 28:8-102.
"Financial asset." § 28:8-102.
"Holder in due course." § 28:3-302.
"Letter of credit." § 28:5-102.
"Note." § 28:3-104.
"Proceeds of a letter of credit." § 28:5-114(a).
"Sale." § 28:2-106.
"Securities intermediary." § 28:8-102.
"Security." § 28:8-102.
"Security certificate." § 28:8-102.
"Security entitlement." § 28:8-102.
"Uncertificated security." § 28:8-102.

* * * * *

(Apr. 9, 1997, D.C. Law 11-238, § 3(f), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(g), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-238 inserted "'Letter of credit'. § 28:5-102" and "'Proceeds of a letter of credit'. § 28:5-114(a)" in (3).

D.C. Law 11-240, inserted "instruments" following "investment property" in (1)(h); in (1)(i), deleted "or a certificated security (defined in section 28:8-102)" following "28:3-104)" and added the last sentence; rewrote (2) and (3).

Legislative history of Law 11-238. — See note to § 28:9-103.

Legislative history of Law 11-240. — See note to § 28:9-103.

§ 28:9-106. Definitions: "account"; "general intangibles".

"Account" means any right to payment for goods sold or leased or for services rendered which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance. "General intangibles" means any rights to proceeds of written letters of credit, personal property (including things in action) other than goods, accounts, chattel paper, documents, instruments, investment property, and money. All rights to payment earned or unearned under a charter or other contract involving the use or hire of a vessel and all rights incident to the charter or contract are accounts. (Dec. 30, 1963, 77 Stat. 750, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-106; Mar. 16, 1982, D.C. Law 4-85, § 14, 29 DCR 309; Apr. 9, 1997, D.C. Law 11-238, § 3(g), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(h), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-238 inserted "rights to proceeds of written letters of credit" in the second sentence.

D.C. Law 11-240 inserted "investment property" following "instruments" in the second sentence.

Legislative history of Law 11-238. — See note to § 28:9-103.

Legislative history of Law 11-240. — See note to § 28:9-103.

§ 28:9-112. Where collateral is not owned by debtor.

Unless otherwise agreed, when a secured party knows that collateral is owned by a person who is not the debtor, the owner of the collateral is entitled to receive from the secured party any surplus under section 28:9-502(2) or under section 28:9-504(2), and is not liable for the debt or for any deficiency after resale, and he has the same right as the debtor

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(aaa), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in the introductory language.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905 , which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28:9-114. Consignment.

* * * * *

(3)(a) In this subsection, the following words have the meanings indicated:

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(bbb), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic and technical correction in the introductory language of (3)(a).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28:9-115. Investment property.

(1) For the purposes of this article, the term:

(a) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(b) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option, or other contract that, in each case, is:

(i) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to the federal commodities laws; or

(ii) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(c) "Commodity customer" means a person for whom a commodity intermediary carries a commodity contract on its books.

(d) "Commodity intermediary" means:

(i) A person who is registered as a futures commission merchant under the federal commodities laws; or

(ii) A person who in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to the federal commodities laws.

(e) "Control" with respect to a certificated security, uncertificated security, or security entitlement has the meaning specified in § 28:8-106. A secured

party has control over a commodity contract if by agreement among the commodity customer, the commodity intermediary, and the secured party, the commodity intermediary has agreed that it will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer. If a commodity customer grants a security interest in a commodity contract to its own commodity intermediary, the commodity intermediary as secured party has control. A secured party has control over a securities account or commodity account if the secured party has control over all security entitlements or commodity contracts carried in the securities account or commodity account.

(f) "Investment property" means:

(i) A security, whether certificated or uncertificated;

(ii) A security entitlement;

(iii) A securities account;

(iv) A commodity contract; or

(v) A commodity account.

(2) Attachment or perfection of a security interest in a securities account is also attachment or perfection of a security interest in all security entitlements carried in the securities account. Attachment or perfection of a security interest in a commodity account is also attachment or perfection of a security interest in all commodity contracts carried in the commodity account.

(3) A description of collateral in a security agreement or financing statement is sufficient to create or perfect a security interest in a certificated security, uncertificated security, security entitlement, securities account, commodity contract, or commodity account whether it describes the collateral by those terms, or as investment property, or by description of the underlying security, financial asset, or commodity contract. A description of investment property collateral in a security agreement or financing statement is sufficient if it identifies the collateral by specific listing, by category, by quantity, by a computational or allocational formula or procedure, or by any other method, if the identity of the collateral is objectively determinable.

(4) Perfection of a security interest in investment property is governed by the following rules:

(a) A security interest in investment property may be perfected by control.

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, a security interest in investment property may be perfected by filing.

(c) If the debtor is a broker or securities intermediary, a security interest in investment property is perfected when it attaches. The filing of a financing statement with respect to a security interest in investment property granted by a broker or securities intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(d) If a debtor is a commodity intermediary, a security interest in a commodity contract or a commodity account is perfected when it attaches. The filing of a financing statement with respect to a security interest in a commodity contract or a commodity account granted by a commodity intermediary has no effect for purposes of perfection or priority with respect to that security interest.

(5) Priority between conflicting security interests in the same investment property is governed by the following rules:

(a) A security interest of a secured party who has control over investment property has priority over a security interest of a secured party who does not have control over the investment property.

(b) Except as otherwise provided in paragraphs (c) and (d) of this subsection, conflicting security interests of secured parties each of whom has control rank equally.

(c) Except as otherwise agreed by the securities intermediary, a security interest in a security entitlement or a securities account granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party.

(d) Except as otherwise agreed by the commodity intermediary, a security interest in a commodity contract or a commodity account granted to the debtor's own commodity intermediary has priority over any security interest granted by the debtor to another secured party.

(e) Conflicting security interests granted by a broker, a securities intermediary, or a commodity intermediary which are perfected without control rank equally.

(f) In all other cases, priority between conflicting security interests in investment property is governed by § 28:9-312(5), (6), and (7). Section 28:9-312(4) does not apply to investment property.

(6) If a security certificate in registered form is delivered to a secured party pursuant to agreement, a written security agreement is not required for attachment or enforceability of the security interest, delivery suffices for perfection of the security interest, and the security interest has priority over a conflicting security interest perfected by means other than control, even if a necessary indorsement is lacking. (Apr. 9, 1997, D.C. Law 11-240, § 3(i), 44 DCR 1087; Apr. 20, 1999, D.C. Law 12-264, § 26(b), 46 DCR 2118.)

Section references. — This section is referred to in §§ 28:8-103, 28:9-105, 28:9-203, 28:9-302, 28:9-303, and 28:9-312.

Effect of amendments. — D.C. Law 12-264, in (4)(b) and (5)(b), validated previously made technical corrections.

Legislative history of Law 11-240. — See note to § 28:9-103.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 28:9-116. Security interest arising in purchase or delivery of financial asset.

(1) If a person buys a financial asset through a securities intermediary in a transaction in which the buyer is obligated to pay the purchase price to the securities intermediary at the time of the purchase, and the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary, the securities intermediary has a security interest in the buyer's security entitlement securing the buyer's obligation to pay. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected.

(2) If a certificated security, or other financial asset represented by a writing which in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment is delivered pursuant to an agreement between persons in the business of dealing with such securities or financial assets and the agreement calls for delivery versus payment, the person delivering the certificate or other financial asset has a security interest in the certificated security or other financial asset securing the seller's right to receive payment. A security agreement is not required for attachment or enforceability of the security interest, and the security interest is automatically perfected. (Apr. 9, 1997, D.C. Law 11-240, § 3(i), 44 DCR 1087.)

Section references. — This section is referred to in §§ 28:9-203, 28:9-302, and 28:9-312.

Legislative history of Law 11-240. — See note to § 28:9-103.

Part 2. Validity of Security Agreement and Rights of Parties Thereto.

§ 28:9-203. Attachment and enforceability of security interest; proceeds; formal requisites.

(1) Subject to the provisions of § 28:4-210 on the security interest of a collecting bank, §§ 28:9-115 and 28:9-116 on security interests in investment properties, and § 28:9-113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless:

(a) the collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement or the debtor has signed a security agreement that contains a description of the collateral and in addition, when the security interest covers crops growing or to be grown or timber to be cut, a description of the land concerned;

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(j), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(ccc), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 16(b), 45 DCR 745.)

Effect of amendments. — D.C. Law 11-240, substituted "§§ 28:9-115 and 29:9-116 on security interests in investment properties" for "§ 28:8-321 on security interests in securities" in the introductory language of (1); and inserted "the collateral is investment property and the secured party has control pursuant to agreement" in (1)(a).

D.C. Law 11-255 validated a previously made technical correction in the introductory language of (1).

D.C. Law 12-81 validated a previously made technical correction.

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective April 9, 1997.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on Novem-

ber 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective April 9, 1997.

Legislative history of Law 12-81. — See note to § 28:2-209.

§ 28:9-204. After-acquired property; future advances.

Cited in Pallie v. Riggs Nat'l Bank, App. D.C., 697 A.2d 1239 (1997).

Part 3. Rights of Third Parties; Perfected and Unperfected Security Interests; Rules of Priority.

§ 28:9-301. Persons who take priority over unperfected security interests; right of "lien creditor".

(1) Except as otherwise provided in subsection (2) of this section, an unperfected security interest is subordinate to the rights of

* * * * *

(d) In the case of accounts, general intangibles, and investment property, a person who is not a secured party and who is a transferee to the extent that he gives value without knowledge of the security interest and before it is perfected.

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(k), 44 DCR 1087; Apr. 20, 1999, D.C. Law 12-264, § 26(c), 46 DCR 2118.)

Effect of amendments. — D.C. Law 11-240 substituted "general intangibles, and investment properties" for "and general intangibles" in (1)(d).

D.C. Law 12-264 validated a previously made technical correction in the introductory language of (1).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

Legislative history of Law 12-264. — See note to § 28:9-115

§ 28:9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

(1) A financing statement must be filed to perfect all security interests except the following:

* * * * *

(b) a security interest temporarily perfected in instruments, certificated securities, or documents without delivery under section 28:9-304 or in proceeds for a ten day period under section 28:9-306;

* * * * *

(f) a security interest of a collecting bank (section 28:4-210) or arising under the article on sales (see section 28:9-113) or covered in subsection (3) of this section;

(g) an assignment for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(h) A security interest in investment property which is perfected without filing under § 28:9-115 or § 28:9-116:

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(l), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(ddd), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 16(c), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(d), 46 DCR 2118.)

Effect of amendments. — D.C. Law 11-240, inserted "certificated securities" following "instruments" in (1)(b); deleted "or in securities (section 28:8-321) following "(section 28:4-210)" in (1)(f); and added (1)(h).

D.C. Law 11-255 validated a previously made technical correction in (1)(f).

Section 16(c) of D.C. Law 12-81 made no change to the text of this section. It was a technical correction to D.C. Law 11-240.

D.C. Law 12-264 made no change to the text of this section. It repealed § 16(c) of D.C. Law 12-81, which was a technical correction to D.C. Law 11-240.

Legislative history of Law 11-240. — See note to § 28:9-301.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-81. — See note to § 28:2-209.

Legislative history of Law 12-264. — See note to § 28:9-115

§ 28:9-303. When security interest is perfected; continuity of perfection.

(1) A security interest is perfected when it has attached and when all of the applicable steps required for perfection have been taken. Such steps are specified in sections 28:9-115, 28:9-302, 28:9-304, 28:9-305 and 28:9-306. If such steps are taken before the security interest attaches, it is perfected at the time when it attaches.

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(m), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240 inserted "28:9-115" in (1).

Legislative history of Law 11-240. — See note to § 28:9-301.

§ 28:9-304. Perfection of security interest in instruments, documents, proceeds of a written letter of credit and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(1) A security interest in chattel paper or negotiable documents may be perfected by filing. A security interest in the rights to proceeds of a written letter of credit can be perfected only by the secured party's taking possession of the letter of credit. A security interest in money, certificated securities, or instruments (other than instruments which constitute part of chattel paper) can be perfected only by the secured party's taking possession, except as provided in subsections (4) and (5) of this section and subsections (2) and (3) of section 28:9-306 on proceeds.

* * * * *

(4) A security interest in instruments, certificated securities, or negotiable documents is perfected without filing or the taking of possession for a period of twenty-one days from the time it attaches to the extent that it arises for new value given under a written security agreement.

(5) A security interest remains perfected for a period of twenty-one days without filing where a secured party having a perfected security interest in an instrument, a certificated security, a negotiable document or goods in possession of a bailee other than one who has issued a negotiable document therefor

* * * * *

(b) delivers the instrument or certificated security to the debtor for the purpose of ultimate sale or exchange or of presentation, collection, renewal or registration of transfer.

* * * * *

(Apr. 9, 1997, D.C. Law 11-238, § 3(h), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(n), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-238 inserted "proceeds of a written letter of credit" in the section heading; and, in (1), inserted the present second sentence, and inserted "certificated securities or" in the present third sentence.

D.C. Law 11-240, deleted "certificated securities or" in (1); substituted "certificated securities" for "(other than certificated securities)" in (4); and, in (5), substituted "certificated security" for "(other than a certificated security" in the introductory language, and inserted "or certificated security or" in (b).

Legislative history of Law 11-238. — Law 11-238, the "Uniform Commercial Code—Letters of Credit Act of 1996," was introduced in Council and assigned Bill No. 11-754, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-498 and transmitted to both Houses of Congress for its review. D.C. Law 11-238 became effective on April 9, 1997.

Legislative history of Law 11-240. — See note to § 28:9-301.

§ 28:9-305. When possession by secured party perfects security interest without filing.

A security interest in goods, instruments, money, negotiable documents, or chattel paper may be perfected by the secured party's taking possession of the collateral. A security interest in the right to proceeds of a written letter of credit may be perfected by the secured party's taking possession of the letter of credit. If such collateral other than goods covered by a negotiable document is held by a bailee, the secured party is deemed to have possession from the time the bailee receives notification of the secured party's interest. A security interest is perfected by possession from the time possession is taken without relation back and continues only so long as possession is retained, unless otherwise specified in this article. The security interest may be otherwise perfected as provided in this article before or after the period of possession by the secured party. (Dec. 30, 1963, 77 Stat. 756, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-305; Mar. 16, 1982, D.C. Law 4-85, § 22, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(f), 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-238, § 3(i), 44 DCR 923; Apr. 9, 1997, D.C. Law 11-240, § 3(o), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-238 rewrote the first sentence; and inserted the present second sentence.

D.C. Law 11-240 deleted "(other than certificated securities)" following "instruments" in the first sentence.

Legislative history of Law 11-238. — See note to § 28:9-304.

Legislative history of Law 11-240. — See note to § 28:9-301.

§ 28:9-306. "Proceeds"; secured party's rights on disposition of collateral.

(1) "Proceeds" includes whatever is received upon the sale, exchange, collection, or other disposition of collateral or proceeds. Insurance payable by reason of loss or damage to the collateral is proceeds, except to the extent that it is payable to a person other than a party to the security agreement. Any payments or distributions made with respect to investment property collateral are proceeds. Money, checks, deposit accounts, and the like, are "cash proceeds". All other proceeds are "non-cash proceeds."

* * * * *

(3) The security interest in proceeds is a continously perfected security interest if the interest in the original collateral was perfected but it ceases to be a perfected security interest and becomes unperfected ten days after receipt of the proceeds by the debtor unless

* * * * *

(b) a filed financing statement covers the original collateral and the proceeds are identifiable cash proceeds;

(b-1) the original collateral was investment property and the proceeds are identifiable cash proceeds; or

* * * * *

(4) In the event of insolvency proceedings instituted by or against a debtor, a secured party with a perfected security interest in proceeds has a perfected security interest only in the following proceeds:

* * * * *

(d) in all cash and deposit accounts of the debtor in which proceeds have been commingled with other funds, but the perfected security interest under this paragraph (d) is

(i) subject to any right to set-off; and

(ii) limited to an amount not greater than the amount of any cash proceeds received by the debtor within ten days before the institution of the insolvency proceedings less the sum of (I) the payments to the secured party on account of cash proceeds received by the debtor during such period and (II) the cash proceeds received by the debtor during such period to which the secured party is entitled under paragraphs (a) through (c) of this subsection.

* * * * *

(Apr. 9, 1997, D.C. Law 11-240, § 3(p), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240, deleted the former third sentence in (1); and inserted (3)(b-1).

Legislative history of Law 11-240. — See note to § 28:9-301.

§ 28:9-309. Protection of purchasers of instruments, documents, and securities.

Nothing in this article limits the rights of a holder in due course of a negotiable instrument (section 28:3-302) or a holder to whom a negotiable document of title has been duly negotiated (section 28:7-501) or a protected purchaser of a security and such holders or purchasers take priority over an earlier security interest even though perfected. Filing under this article does not constitute notice of the security interest to such holders or purchasers. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-309; Mar. 16, 1993, D.C. Law 9-196, § 5(g), 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 3(q), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240 substituted "protected purchaser of a security" for "bona fide purchaser of security (section 28:8-302)."

Legislative history of Law 11-240. — See note to § 28:9-301.

§ 28:9-312. Priorities among conflicting security interests in the same collateral.

(1) The rules of priority stated in other sections of this part and in the following sections shall govern when applicable: section 28:4-210 with respect to the security interests of collecting banks in items being collected, accompanying documents and proceeds; section 28:9-103 on security interests related

to other jurisdictions; section 28:9-114 on consignments; section 28:9-115 on security interests in investment properties.

(2) A perfected security interest in crops for new value given to enable the debtor to produce the crops during the production season and given not more than three months before the crops become growing crops by planting or otherwise takes priority over an earlier perfected security interest to the extent that such earlier interest secures obligations due more than six months before the crops become growing crops by planting or otherwise, even though the person giving new value had knowledge of the earlier security interest.

* * * * *

(7) If future advances are made while a security interest is perfected by filing, the taking of possession, or under section 28:9-115 or section 28:9-116 on investment property, the security interest has the same priority for the purposes of subsection (5) of this section or section 28:9-115(5) with respect to the future advances as it does with respect to the first advance. If a commitment is made before or while the security interest is so perfected, the security interest has the same priority with respect to advances made pursuant thereto. In other cases a perfected security interest has priority from the date the advance is made. (Dec. 30, 1963, 77 Stat. 758, Pub. L. 88-243, § 1; 1973 Ed., § 28:9-312; Mar. 16, 1982, D.C. Law 4-85, § 26, 29 DCR 309; Mar. 16, 1993, D.C. Law 9-196, § 5(h), 39 DCR 9165; Apr. 9, 1997, D.C. Law 11-240, § 3(r), 44 DCR 1087; Apr. 9, 1997, D.C. Law 11-255, § 27(eee), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-240, in (1) validated a previously made technical correction and added "28:9-115 on security interests in investment properties" at the end; and in (7), substituted "28:9-115 or section 28:9-116 on investment property" for "28:8-321 on securities" and inserted "or section 28:9-115(5)."

D.C. Law 11-255 validated a previously made technical correction in (1).

Legislative history of Law 11-240. — See note to § 28:9-301.

Legislative history of Law 11-255. — See note to § 28:9-302.

§ 28:9-313. Priority of security interests in fixtures.

* * * * *

(2) A security interest under this article may be created in goods which are fixtures or may continue in goods which become fixtures, but no security interest exists under this article in ordinary building materials incorporated into an improvement on land.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(fff), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (2).

Legislative history of Law 11-255. — See note to § 28:9-302.

§ 28:9-314. Accessions.

(1) A security interest in goods which attaches before they are installed in or affixed to other goods takes priority as to the goods installed or affixed (called in this section "accessions") over the claims of all persons to the whole except as stated in subsection (3) of this section and subject to section 28:9-315 (1).

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(ggg), 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-264, § 26(d), 46 DCR 2118.)

Effect of amendments. — D.C. Law 11-255 validated a previously made typographical correction in (1).

D.C. Law 12-264 validated a previously made technical correction in (1).

Legislative history of Law 11-255. — See note to § 28:9-302.

Legislative history of Law 12-264. — See note § 28:9-115

Part 4. Filing.

§ 28:9-403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

* * * * *

(2) Except as provided in subsection (6) of this section a filed financing statement is effective for a period of five years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the five year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until termination of the insolvency proceedings and thereafter for a period of sixty days or until expiration of the five year period, whichever occurs later. Upon lapse the security interest becomes unperfected, unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is deemed to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(hhh), 44 DCR 1271.)

Effect of amendments.

D.C. Law 11-255 validated a previously made technical correction in (2).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Part 5. Default.

§ 28:9-501. Default; procedure when security agreement covers both real and personal property.

Cited in Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

§ 28:9-503. Secured party's right to take possession after default.

Construction with other law. — The replevin statute, § 16-3701 et seq., does not bar the exercise of the contractual right to self-help repossession once a replevin action is filed. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

Remedy not exclusive. — There is no provision in this section that bars the creditor's pursuit of alternate remedies simultaneously; private contractual rights to recover property are not foreclosed simply because the secured creditor files a replevin action to recover the property. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

Limitations on right to take possession. — The only limitation to the creditor's statutory remedy to repossess the collateral, other than any provided for by contract, is that the secured party proceed only if repossession can be done without breach of the peace. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

"Breach of the peace." — A breach of the peace within the meaning of this section has been held to occur where possession is accompanied by the threat of violence or where the secured creditor breaks into unopened buildings or garages. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

The entry onto the debtor's land, without confrontation or resistance, is not a breach of the peace within the meaning of this section. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

If the debtor is present and makes an objection, the breach of the peace analysis comes to the fore; the creditor's agent must then desist. Headspeth v. Mercedes-Benz Credit Corp., App. D.C., 709 A.2d 717 (1998).

§ 28:9-504. Secured party's right to dispose of collateral after default; effect of disposition.

Bank's liquidation of accounts. — Bank's liquidation of accounts, in which the bank held a security interest, neither violated the automatic stay imposed by R. Civ. P. 62(a) nor placed the bank in contempt of court; the bank already had physical possession of the accounts when judgment was entered, and nothing in the stay of the judgment addressed the availability of the bank's self-help remedy of liquidating those accounts. Pallie v. Riggs Nat'l Bank, App. D.C., 697 A.2d 1239 (1997).

ARTICLE 10. CONSTRUCTION WITH OTHER LAWS.

Sec.
28:10-104. Laws not repealed.

§ 28:10-104. Laws not repealed.

(1) The article on documents of title (article 7) does not repeal or modify any laws prescribing the form or contents of documents of title or the services or facilities to be afforded by bailees, or otherwise regulating bailees' businesses in respects not specifically dealt with herein; but the fact that such laws are violated does not affect the status of a document of title which otherwise complies with the definition of a document of title (section 28:1-201).

(2) Repealed. (Dec. 30, 1963, 77 Stat. 769, Pub. L. 88-243, § 1; 1973 Ed., § 28:10-104; Apr. 9, 1997, D.C. Law 11-240, § 3(s), 44 DCR 1087.)

Effect of amendments. — D.C. Law 11-240 deleted (2).

Legislative history of Law 11-240. — Law 11-240, the "Uniform Commercial Code Investment Securities Revision Act of 1996," was introduced in Council and assigned Bill No. 11-576, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-500 and transmitted to both Houses of Congress for its review. D.C. Law 11-240 became effective on April 9, 1997.

SUBTITLE II. OTHER COMMERCIAL TRANSACTIONS.

CHAPTER 21. ASSIGNMENT FOR BENEFIT OF CREDITORS.

Sec.
28-2103. Assignee.

§ 28-2103. Assignee.

Only a resident of the District of Columbia may be an assignee in an assignment for the benefit of creditors. His assent shall appear in writing in, or at the end of, or indorsed on, the assignment. An assignment is invalid unless acknowledged and recorded within five days after its execution in the land records of the District. A trust created by an assignment shall be executed under the supervision and control of the court having probate jurisdiction. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88-509, § 1; July 29, 1970, 84 Stat. 569, Pub. L. 91-358, title I, § 151(a); 1973 Ed., § 28-2103; Apr. 9, 1997, D.C. Law 11-255, § 27(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 23. ASSIGNMENT OF CHOSES IN ACTION.

§ 28-2301. Assignment of judgment or money decree.

Nature of chapter. — This chapter embodies the policy of free assignability of claims. Antal's Restaurant, Inc. v. Lumbermen's Mut. Cas. Co., App. D.C., 680 A.2d 1386 (1996).

§ 28-2302. Assignment of bond or obligation.

An express anti-assignment clause of an insurance contract does not bar assignment of an insured's claim (or "chose in action") against the insured after a loss has occurred. Antal's Restaurant, Inc. v. Lumbermen's Mut. Cas. Co., App. D.C., 680 A.2d 1386 (1996).

§ 28-2303. Assignment of nonnegotiable contract.

Congressional intent.
Although the amount owed to an insured under a policy by an insurer may still be disputed, this statute was enacted against a background of decisions holding that the debt for which the insurer becomes liable is fixed at the time of loss even though the amount of compensation is still to be ascertained. Antal's Restaurant, Inc. v. Lumbermen's Mut. Cas. Co., App. D.C., 680 A.2d 1386 (1996).

An express anti-assignment clause of an insurance contract does not bar assignment of an insured's claim (or "chose in action") against the insured after a loss has occurred. Antal's Restaurant, Inc. v. Lumbermen's Mut. Cas. Co., App. D.C., 680 A.2d 1386 (1996).

§ 28-2304. General assignments including choses in action.

An express anti-assignment clause of an insurance contract does not bar assignment of an insured's claim (or "chose in action") against the insured after a loss has occurred. Antal's Restaurant, Inc. v. Lumbermen's Mut. Cas. Co., App. D.C., 680 A.2d 1386 (1996).

Malpractice claims. — Public policy does not prohibit the assignment of a legal malpractice claim and D.C. law does not prevent it. Richter v. Analex Corp., 940 F. Supp. 353 (D.D.C. 1996).

CHAPTER 27. BUSINESS HOLIDAYS AND COMPUTATION OF TIME.

Subchapter 2. Computation of Time.

Subchapter 2. Computation of Time.

§ 28-2711. Daylight savings time.

The standard time applicable in the District of Columbia shall be advanced by one hour from 2:00 AM on the last Sunday in April of each year until 2:00 AM on the last Sunday in October of each year and this time, known as daylight savings time, shall, during the period of the year for which it is applicable, be the standard time for the District of Columbia. (Aug. 30, 1964, 78 Stat. 672, Pub. L. 88-509, § 1; 1973 Ed., § 28-2711; Mar. 13, 1985, D.C. Law 5-133, § 2, 31 DCR 5720; Apr. 9, 1997, D.C. Law 11-255, § 27(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in the section heading and text.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 31. FRAUDULENT CONVEYANCES.

§ 28-3101. Definitions.

Standard of proof. — The standard of proof necessary to prove an intent to defraud, clear and convincing evidence, applies to a challenged transfer based on an intent to hinder. Roberts & Lloyd, Inc. v. Zyblut, App. D.C., 691 A.2d 635 (1997).

No fraudulent intent found. — Even if the presumption—that joint brokerage accounts owned by a married couple were held as tenants by the entirety—had been overcome, a judgment creditor failed to prove by clear and convincing evidence that a transfer of the accounts to accounts specifying ownership in tenancy by the entirety was done with fraudulent intent. Roberts & Lloyd, Inc. v. Zyblut, App. D.C., 691 A.2d 635 (1997).

Presumption that married couple own property jointly as tenants by the entirety applies to joint brokerage accounts. — In an action under the Fraudulent Conveyance Act, § 28-3101 et seq., the presumption that a married couple owning property jointly hold it as tenants by the entirety applied to joint brokerage accounts, and thus there could be no conveyance. Roberts & Lloyd, Inc. v. Zyblut, App. D.C., 691 A.2d 635 (1997).

Cited in Wolf v. Sherman, App. D.C., 682 A.2d 194 (1996); Finley v. Thomas, App. D.C., 691 A.2d 1163 (1997).

§ 28-3106. When transfer is made or obligation is incurred.

For the purposes of this chapter:

* * * * *

(2) If applicable law permits the transfer to be perfected as provided in paragraph (1) of this section and the transfer is not so perfected before the commencement of an action for relief under this chapter, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in paragraph (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(c), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (2) and (3).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 33. INTEREST AND USURY.

§ 28-3301. Rate of interest expressed in contract.

Section inapplicable to mortgage bankers. — This section, which by its terms applies only to lenders, does not apply to mortgage brokers. Young v. 1st Am. Fin. Servs., 992 F. Supp. 440 (D.D.C. 1998).

Statute of limitations. — A three-year statute of limitations applies in an action against a lender for the lender's failure to make material disclosures at the time of the loan. Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

Failure to comply with Truth in Lending Act. — A loan secured by a mortgage or deed of trust violates the D.C. usury laws if the lender fails to furnish the borrower with a separate written statement that complies with the disclosure provision of the federal Truth in Lending Act, 15 U.S.C.S. § 1601 et seq. Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

§ 28-3302. Rate of interest not expressed and on judgments.

Application of fixed rate. — Under subsection (c) of this section, the interest rate fluctuates unless good cause is shown. The Commission found good cause to apply a fixed rate where there were nine years of protracted administrative delay and where there was no evidence that either party was at fault, and the record supported the Commission's decision. Jerome Mgt., Inc. v. District of Columbia Rental Hous. Comm'n, App. D.C., 682 A.2d 178 (1996).

The trial court erred by submitting to the jury the issue of whether compound interest should be added to employees' award in a collective bargaining dispute where there was no contractual provision in the collective bargaining agreement allowing for compound interest. Rastall v. CSX Transp., Inc., App. D.C., 697 A.2d 46 (1997).

Cited in Kirkland & Ellis v. Ruiz-Mateos, 936 F. Supp. 9 (D.D.C. 1996); In re Ray, App. D.C., 675 A.2d 1381 (1996); In re Chisholm, App. D.C., 679 A.2d 495 (1996); In re Foster, App. D.C., 699 A.2d 1110 (1997); District of Columbia v. Organization for Envtl. Growth, Inc., App. D.C., 700 A.2d 185 (1997); Kapusta v. District of Columbia Rental Hous. Comm'n, App. D.C., 704 A.2d 286 (1997); In re Huber, App. D.C., 708 A.2d 259 (1998).

§ 28-3303. Usury defined.

If a person or corporation contracts in the District,

* * * * *

(2) in writing, to pay a greater rate than is permitted under section 28-3301, 28-3308, under Chapter 36 of this subtitle, or under § 26-1101 et seq., the creditor shall forfeit the whole of the interest so contracted to be received.

* * * * *

(May 12, 1998, D.C. Law 12-111, § 25(a), 45 DCR 1782.)

Cross references.

As to licensing and regulation of check cashers, see § 28-4701 et seq.

Effect of amendments. — D.C. Law 12-111, in (2), inserted "or under § 26-1101 et seq." and made stylistic changes.

Legislative history of Law 12-111. — Law 12-111, the "Check Cashers Act of 1998," was introduced in Council and assigned Bill No. 12-338, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on January 6, 1998, and February 3, 1998, respectively. Signed by the Mayor on February 24, 1998, it was assigned Act No. 12-300 and transmitted to both Houses of Congress for its review. Law 12-111 became effective on May 12, 1998.

§ 28-3304. Action to recover usury paid.

Statute of limitations in action for failure to make material disclosure. — A three-year statute of limitations applies in an action against a lender for the lender's failure to make material disclosures at the time of the loan. Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

§ 28-3307. Council of the District of Columbia authorized to exempt certain mortgages and loans.

The Council of the District of Columbia is authorized from time to time to provide by regulation for the exemption from the provisions of this chapter of any mortgage or loan insured or guaranteed under the National Housing Act or Chapter 37 of Title 38, United States Code, the interest rate of which is subject to regulation by an officer or agency of the Federal Government. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal shall affect any such loan or mortgage lawfully made or committed to be made while such exemption is in effect. (Aug. 20, 1970, 84 Stat. 828, Pub. L. 91-385, § 2(a); 1973 Ed., § 28-3307; Apr. 9, 1997, D.C. Law 11-255, § 27(d), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in the section heading and text.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28-3308. Finance charge on direct installment loans.

* * * * *

(c) Upon prepayment in full of such direct installment loan other than a refinancing or consolidation, whether or not precomputed, the lender may collect or retain a minimum charge within the limits stated in this section if the finance charge earned at the time of prepayment is less than any minimum charge contracted for. The minimum charge may not exceed the smaller of the following: (1) the amount of the finance charge contracted for, or (2) $5 in a transaction which had a principal of $75 or less, or $7.50 in a transaction which had a principal of more than $75.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(e), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (c).

Legislative history of Law 11-255. — See note to § 28-3307.

§ 28-3309. Council of the District of Columbia authorized to exempt certain loans, and to change rates of interest.

The Council of the District of Columbia is authorized from time to time to provide by regulation for (1) the exemption from the provisions of this chapter of any loan or financial transaction, and (2) the change of any interest rate specified in this chapter. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal relating to any exemption made under authority of this section shall affect any such loan or financial transaction lawfully made or entered into while such exemption is in effect. (1973 Ed., § 28-3309; Dec. 29, 1973, 87 Stat. 945, Pub. L. 93-229, § 1(a); Apr. 9, 1997, D.C. Law 11-255, § 27(f), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in the section heading and text.

Legislative history of Law 11-255. — See note to § 28-3307.

§ 28-3312. Unlawful practices.

It shall be a violation of this chapter for any lender to:

* * * * *

(5) include in the loan or financial transaction agreement an acceleration clause under which any part or all of the unpaid balance of the loan or financial transaction not yet matured may be declared due and payable for any reason other than due to default by the borrower in the payment or in accordance with another term of the agreement; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(g), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (5).

Legislative history of Law 11-255. — See note to § 28-3307.

Cited in Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

§ 28-3314. Right of action.

Any borrower who suffers a violation of any provision of this chapter by any lender may bring an action in the Superior Court of the District of Columbia to recover, or obtain, or enforce any of the following:

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(h), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in the section introductory language.

Legislative history of Law 11-255. — See note to § 28-3307.

CHAPTER 35. STATUTE OF FRAUDS.

Sec.
28-3504. New promise or acknowledgement of contract — Action against joint contractors.

§ 28-3501. Estate created otherwise than by deed.

Contract for sale of business. — This chapter does not bar the performance of an oral contract for the sale of a restaurant because the contract did not convey real estate but only conveyed the restaurant's business including its fixtures and equipment. R & A, Inc. v. Kozy Korner, Inc., App. D.C., 672 A.2d 1062 (1996).

§ 28-3502. Special promise to answer for debt or default of another.

Substantial part performance. — While this section bars the enforcement of an oral contract that cannot by its terms be performed within one year, an exception to this bar applies when partial performance has occurred; consequently, where terms of an agreement made orally between parties provided for monthly payments to be made over a period of five years for a total sum of $180,000 and $120,000 had been paid, substantial partial performance had occurred, which justified removing the oral contract from statute of frauds. R & A, Inc. v. Kozy Korner, Inc., App. D.C., 672 A.2d 1062 (1996).

Where terms of an agreement made orally between parties provided for monthly payments to be made for as long as the contract continued, the payment of $30,000 for each of five successive years constitutes substantial partial performance. Fitzgerald v. Hunter Concessions, Inc., App. D.C., 710 A.2d 863 (1998).

Cited in Haft v. Haft, 124 WLR 1817 (Super. Ct. 1996).

§ 28-3504. New promise or acknowledgement of contract — Action against joint contractors.

In an action upon a simple contract, an acknowledgement, or promise, by words only is not sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the statute of limitations or to deprive a party of the benefit thereof unless the acknowledgement, or promise, is in writing, signed by the party chargeable thereby. This section does not alter or take away, or lessen the effect of a payment of principal or interest made by any person. In actions against two or more joint contractors, or executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of the defendants, is nevertheless entitled to recover against any other defendant by virtue of a new acknowledgement, or promise, or otherwise, judgment may be given for the plaintiff as to that defendant. An indorsement or memorandum of a payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment is to be made, is not sufficient proof of the payment so as to take the case out of the operation of the statute of limitations. (Aug. 30, 1964, 78 Stat. 677, Pub. L. 88-509, § 1; 1973 Ed., § 28-3504; Apr. 9, 1997, D.C. Law 11-255, § 27(i), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it

was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

CHAPTER 37. REVOLVING CREDIT ACCOUNTS.

Sec.
28-3701. Definitions.
28-3702. Amount and computation of credit service charge.

§ 28-3701. Definitions.

As used in this chapter —

* * * * *

(2) "credit service charge" means the sum of (A) all charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or financial institution as an incident to the extension of credit, including any of the following types of charges which are applicable: time-price differential, service, carrying, or other charge, however denominated, premium or other charge for any guarantee or insurance protecting the seller or financial institution against the buyer's default or other credit loss, and (B) charges incurred for investigating the collateral or credit-worthiness of the buyer or for commissions or brokerage for obtaining the credit irrespective of the person to whom the charges are paid or payable, unless the seller or financial institution had no notice of the charges when the credit was granted.

* * * * *

(6) "financial institution" means a person who enters into an agreement with a buyer whereby the former agrees to extend credit to the buyer and to apply it as directed by the buyer pursuant to a credit card issued to the buyer by the financial institution; and this term includes any "insured bank" as defined in section 3 of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 873; 12 U.S.C. sec. 1813) or any "insured institution" as defined in section 401 of the National Housing Act, approved June 27, 1934 (12 U.S.C. sec. 1724; 48 Stat. 1255) and any subsidiary corporation which is wholly-owned by a financial institution doing business in the District. (Dec. 17, 1971, 85 Stat. 667, Pub. L. 92-200, § 4; 1973 Ed., § 28-3701; Mar. 10, 1982, D.C. Law 4-70, § 5, 28 DCR 5236; Apr. 9, 1997, D.C. Law 11-255, § 27(j), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (2) and (6).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28-3702. Amount and computation of credit service charge.

* * * * *

(c)

* * * * *

(2) Notwithstanding the terms of any revolving credit account or any other provision of law, a seller or financial institution, with respect to its revolving credit accounts may (A) impose or increase any credit service charge, (B) change the method of computing the balance upon which charges are imposed, or (C) increase the required minimum periodic payment; provided, that the seller or financial institution mails a written notice of the change to each affected buyer at least thirty (30) days before the effected date of the change; provided, further, that the seller or financial institution shall permit each affected buyer to repay, under the existing terms, any debt incurred prior to the effective date of the change, unless the buyer incurs additional debt on or after that date or otherwise assents in writing to the changes. This paragraph does not authorize a seller or financial institution to impose a credit service charge in excess of that permitted under paragraph (1) of this subsection.

(3) The notice required by paragraph (2) of this subsection shall clearly set forth the new term or terms, the corresponding existing term or terms, and the effective date of the change; shall appear on a single document that contains no other information except the changed revolving credit account agreement or other material directly related to the change; and shall be in plain language. The notice shall clearly explain the two options available to the buyer. The options shall be presented more conspicuously than the rest of the notice by, for example, bold-faced type, larger type size, or contrasting color.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(k), 44 DCR 1271.)

Effect of amendments. D.C. Law 11-255 validated previously made stylistic corrections in (c)(2) and (3).

Legislative history of Law 11-255. — See note to § 28-3701.

CHAPTER 38. CONSUMER PROTECTIONS.

§ 28-3802. Definitions.

As used in this chapter —

* * * * *

(2) "consumer credit sale" means a sale of goods or services in which —

(A) A credit is granted by a person who regularly engages as a seller in credit transactions of the same kind;

* * * * *

(3) "direct installment loan" means a direct installment loan as that term is used in section 28-3308 and does not include a loan secured on real estate or a direct motor vehicle installment loan covered by Chapter 36 of this title.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(l), 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-264, § 27(a), 46 DCR 2118.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (2)(A) and (3).

D.C. Law 12-264 validated a previously made technical correction in (3).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 28-3803. Balloon payments.

With respect to a consumer credit sale or direct installment loans except for revolving credit accounts:

* * * * *

(3) In the event that the provisions of paragraph (2) of this subsection apply, the consumer shall have the right at any time, without further cost or obligation, to revise the schedule of payments to conform both as to amounts and intervals to the average of all installments and intervals. (Dec. 17, 1971, 85 Stat. 669, Pub. L. 92-200, § 4; 1973 Ed., § 28-3803; Apr. 9, 1997, D.C. Law 11-255, § 27(m), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (3).

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3805. Debts secured by cross-collateral.

(a) If debts arising from two or more consumer credit sales other than sales pursuant to a revolving charge account (section 28-3701), are secured by cross-collateral, or consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross-collateral or the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(n), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (a).

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3806. Attorney's fees.

With respect to a consumer credit sale or direct installment loan the agreement may provide for the payment by the consumer of reasonable attorney's fees not in excess of 15% of the unpaid balance of the obligation. (Dec. 17, 1971, 85 Stat. 670, Pub. L. 92-200, § 4; 1973 Ed., § 28-3806; Apr. 9, 1997, D.C. Law 11-255, § 27(o), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections.

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3810. Referral sales.

With respect to a consumer credit sale, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the sellor or lessor in making a sale or lease to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them. (Dec. 17, 1971, 85 Stat. 671, Pub. L. 92-200, § 4; 1973 Ed., § 28-3810; Apr. 9, 1997, D.C. Law 11-255, § 27(p), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction.

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3811. Home solicitation sales.

* * * * *

(b) Except as provided in subsection (f) of this section, in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section.

* * * * *

(e) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(q), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (b) and (e).

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3817. Health spa sales.

* * * * *

(c)

* * * * *

(4) The cancellation balance shall be calculated as follows:

* * * * *

(B) Multiply the contract price (or the price for the renewal period then in effect) by the quotient obtained in subparagraph (A) of this paragraph.

(C) Add to the amount obtained in subparagraph (B) of this paragraph a registration fee of 5% of the original price of the contract (not counting any finance charge), but in no case more than $25.00.

(D) If the payment by the consumer of the contract price is financed, subtract from the amount obtained in subparagraph (C) of this paragraph the amount of interest, calculated by the method of 78ths, not yet accrued through the month of the contract during which cancellation occurs.

(E) Subtract the difference obtained in subparagraph (D) of this paragraph, or if not applicable, the amount obtained in subparagraph (C) of this paragraph, from the amount already paid by the buyer under the contract and finance agreement.

If this balance is a positive figure, it is the amount of the seller's refund to the buyer, and shall be due and payable within 15 days after the cancellation. If this balance is a negative figure, it is the amount of the buyer's obligation to the seller, and within 15 days after the cancellation, the seller shall notify the buyer of his obligation. Notice of such obligation, if given by mail, is given when

it is deposited in a mail box postage prepaid and properly addressed to the buyer's address as stated in the notice of cancellation, or, if the buyer's address is not stated there, as stated in the contract.

* * * * *

(d)

* * * * *

(2) If a contract containing a health spa sale does not meet all the requirements of subsection (b) of this section, such health spa sale shall be void, and the buyer shall at any time be entitled to a complete refund of all payments made under that contract.

(3) Any person, company or organization which purchases a buyer's obligations under a health spa sale, makes such purchase subject to the buyer's right to cancel as explained in subsection (c) of this section, as if such person, company, organization were the seller.

(4) The principal consumer protection agency or the Corporation Counsel of the District of Columbia Government may seek in the proper court or administrative agency an order requiring a health spa to include in all health spa sale contracts the notice required in subsection (b)(4) of this section.

(e)(1) Each health spa which contracts health spa sales for goods or services to be provided or made available at a health spa which is planned, under construction, or in operation shall be required by the Department of Consumer and Regulatory Affairs ("Department") to maintain a bond, issued by a surety company licensed to do business in the District of Columbia, in an amount not less than $50,000, or shall file with the Department an irrevocable letter of credit or cash in that amount. A buyer of a health spa sale who suffers or sustains any loss or damage by reason of breach of contract or bankruptcy by the seller or by reason of a violation by the seller of the provisions of this act may bring an action based on the bond and recover against the surety, the liability of the surety under any bond may not exceed the aggregate amount of the bond, regardless of the number or amount of claims filed. If the claims filed should exceed the amount of the bond, the surety shall pay the amount of the bond to the Department for distribution to claimants entitled to restitution and shall be relieved of all liability under the bond.

(2) A health spa which states in writing, at the time it registers with the Department pursuant to subsection (f) of this section, that it will make health spa sales to no more than 100 persons, shall for as long as it abides by the agreement be required to purchase a surety bond in the amount of $25,000 or to file with the Department an irrevocable letter of credit or cash in that amount.

(3) Each health spa, prior to making or contracting for any health spa sale, shall complete the registration required by subsection (f) of this section and shall file with the Department evidence that the bond or letter of credit is in force or shall file cash in lieu of the bond or letter of credit. Each health spa obtaining a bond or letter of credit shall file annually with the Department evidence that the bond or letter of credit remains in force, and shall maintain accurate records of the bond and premium payments on it, or of the letter of

credit. These records shall be open to inspection by the Department at any time during normal business hours.

* * * * *

(g) Any person or health spa which makes or contracts to make any health spa sale in violation of subsection (e)(3) of this section shall be subject to a fine of not less than $1,000 and not more than $5,000.

(h) The Department may bring an action to enjoin the sale of health spa memberships by any health spa which fails to comply with subsection (e)(3) of this section. (1973 Ed., § 28-3817; Apr. 15, 1976, D.C. Law 1-62, § 2(a), 22 DCR 6044; Mar. 13, 1985, D.C. Law 5-138, § 2, 31 DCR 5747; Apr. 9, 1997, D.C. Law 11-255, § 27(r), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (c)(4)(B) through (E), (d)(2) through (4), (e)(1) through (3), (g), and (h).

Legislative history of Law 11-255. — See note to § 28-3701.

§ 28-3818. Layaway plans.

(a) *Definitions.* — As used in this section the term:

(1) "consumer goods" means chattels owned, used, or bought by an individual for personal, family, or household purposes. The term consumer goods does not include goods acquired for commercial or business use or resale;

* * * * *

(3) "service charge" means a one time charge, not to exceed one dollar ($1.00) on any layaway plan, to cover the administrative costs associated with such layaway plan; provided, that the one dollar ($1.00) service charge shall cover all layaway plan transactions between the retailer and a single consumer occurring in the same business day.

(b) *Disclosures.* — The seller shall, prior to the time of executing a layaway plan agreement, provide the buyer with a copy of a written, clear, and conspicuous disclosure. Failure of the seller to comply with this provision shall be deemed an executed trade practice in violation of the law of the District of Columbia for which the penalties in section 6(i)(3) of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76) shall apply. The disclosure required by this subsection shall include:

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(s), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (a)(1), (a)(3), and (b).

Legislative history of Law 11-255. — See note to § 28-3802.

§ 28-3819. Rental housing locators.

(a) *Definitions.* — As used in this section the term or terms:

* * * * *

(4) "Rental unit" means any room, suite, apartment, or single family house rented or offered for rent as a residence, including any appurtenant services, facilities, improvements or land.

(b) Repealed.

(c) *Accuracy of information.* —

(1) Every rental housing locator shall revise and correct all information to be provided pursuant to a rental housing locator contract or otherwise made available to any customer, potential customer, or the general public, every 24 hours for rental units it advertises and every 48 hours for rental units it does not advertise, or else remove such units from its lists and discontinue the advertising of such units.

* * * * *

(d) *Contracts.* —

(3) Every rental housing locator shall refund, upon request, any fee to any customer within thirty (30) days of said request if any of the rental housing information provided to that customer by the locator fails to comply with the requirements of accuracy as defined by subsection (c) of this section or if the locator fails, upon demand, to provide the correct street address or telephone number of any rental housing unit it advertises or otherwise describes to a customer; or if the locator fails to provide a customer with rental housing listings as called for in the contract.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(t), 44 DCR 1271; Apr. 20, 1999, D.C. Law 12-261, § 2003(t), 46 DCR 3142.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (a)(4), (c)(1), and (d)(3).

D.C. Law 12-261 repealed (b).

Legislative history of Law 11-255. — See note to § 28-3802.

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 39. CONSUMER PROTECTION PROCEDURES.

§ 28-3901. Definitions and purposes.

(a) As used in this chapter, the term —

* * * * *

(12) "Office of Consumer Education and Information" means the Department's Office of Consumer Education and Information which is responsible for carrying out the statutory requirements set forth in section 28-3906; and

* * * * *

(b) The purposes of this chapter are to:

* * * * *

(2) promote, through effective enforcement, fair business practices throughout the community; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(u), 44 DCR 1271.)

Section references. — This section is referred to in § 47-2853.197.

Effect of amendments.

D.C. Law 11-255 validated previously made stylistic corrections in (a)(12) and (b)(2).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Effect of chapter. — The District of Columbia Consumer Protection Procedures Act establishes the Department of Consumer and Regulatory Affairs as the consumer protection agency of the D.C. Government and sets up procedures for the agency to investigate and remedy consumer complaints; it enumerates a broad array of "unfair trade practices" and provides mechanisms for consumers to pursue both administrative and judicial remedies. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Applicability.

This chapter does not apply to a nonprofit membership organization's sale of certain goods and services to their members, even if a significant amount of dollars is generated by such sales. Schiff v. American Ass'n of Retired Persons, App. D.C., 697 A.2d 1193 (1997).

Lenders who were not D.C. corporations availed themselves of, and subjected themselves to, the D.C. consumer protection laws by issuing a loan to a D.C. resident and taking his D.C. home as collateral, despite the fact that the loan transaction took place outside of the District. Williams v. Central Money Co., 974 F. Supp. 22 (D.D.C. 1997).

Consumer.

Plaintiff who claimed that defendant publishers violated the Consumer Protection and Procedures Act when they rejected her unsolicited manuscripts and research proposals was not a "consumer" within the meaning of this section because her claims did not arise from the purchase, lease, or receipt of consumer goods or services. Slaby v. Fairbridge, 3 F. Supp. 2d 22 (D.D.C. 1998).

Entities held not to be merchants.

Nonprofit educational institutions did not act in the capacity of merchants. Hendel v. World Health Plan Executive Council, 124 WLR 957 (Super. Ct. 1996).

Federal filed tariff doctrines. — Plaintiffs' claims concerning a telecommunication company's unfair trade practices, fraud, negligence, breach of contract, and unjust enrichment, all based on District of Columbia statutory and common law, were dismissed for failing to state a claim for which relief can be granted in light of the federal filed tariff doctrine. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Cited in Diamond v. Davis, App. D.C., 680 A.2d 364 (1996); Alicke v. MCI Communications Corp., 111 F.3d 909 (D.C. Cir. 1997).

§ 28-3902. Department of Consumer and Regulatory Affairs as consumer protection agency.

* * * * *

(e) The Mayor shall appoint one or more attorneys qualified to serve as administrative law judges or attorney examiners to conduct adjudicatory proceedings. Any administrative law judge or attorney examiner appointed pursuant to this subsection may hear cases pursuant to § 6-2703.

* * * * *

(h) Repealed.

(i) Notwithstanding any other provision of District law, enforcement of this chapter by the Department of Consumer and Regulatory Affairs is suspended until October 1, 2000. (1973 Ed., T. 28, Appx., § 3; July 22, 1976, D.C. Law 1-76, § 3, 23 DCR 1185; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 5, 1981, D.C. Law 3-159, § 2(a), 27 DCR 5147; Oct. 5, 1985, D.C. Law 6-42, § 422, 32 DCR 4450; Mar. 8, 1991, D.C. Law 8-234, § 2(c), 38 DCR 296; Mar. 8, 1991, D.C. Law 8-237, § 4, 38 DCR 314; Feb. 5, 1994, D.C. Law 10-68, § 27(a), (c), 40 DCR 6311; Sept. 26, 1995, D.C. Law 11-52, § 812, 42 DCR 3684; Apr. 9, 1997, D.C. Law 11-255, § 27(v), 44 DCR 1271; Apr. 29, 1998, D.C. Law 12-86, § 1301(a), 45 DCR 1172; Mar. 26, 1999, D.C. Law 12-175, § 1403, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 27(b), 46 DCR 2118.)

Effect of amendments.

D.C. Law 11-255 validated a previously made stylistic correction in (e).

D.C. Law 12-86 repealed (h).

D.C. Law 12-175 added (i).

D.C. Law 12-264, in (e), validated a previously made technical correction.

Temporary amendment of section. — Section 503 of D.C. Law 12-154 added (i).

Section 601(b) of D.C. Law 12-154 provides that the act shall expire after 225 days of its having effect.

Emergency act amendments.

For temporary amendment of section, see § 503 of the Health Insurance Portability and Accountability Federal Law Conformity Emergency Amendment Act of 1998 (D.C. Act 12-339, May 4, 1998, 45 DCR 2947) and § 503 of the Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-429, August 6, 1998, 45 DCR 5890).

For temporary amendment of section, see § 1003 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794) and § 1003 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 11-255. — See note to § 28-3901.

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Legislative history of Law 12-154. — Law 12-154, the "Health Insurance Portability and Accountability Federal Law Conformity, Motor Vehicle Insurance, Regulatory Reform, and Consumer Law Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-611. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 22, 1998, it was assigned Act No. 12-373 and transmitted to both Houses of Congress for its review. D.C. Law 12-154 became effective on September 18, 1998.

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 28-3903. Powers of the consumer protection agency.

(a) The Department, in its discretion, may:

(1) receive and investigate any consumer complaint and initiate its own investigation of deceptive, unfair, or unlawful trade practices against consumers where the:

(i) amount in controversy totals $2,500 or more; or

(ii) case, or cases, indicates a pattern or practice of abuse on the part of a business or industry;

(2) issues summonses and subpoenas to compel the production of documents, papers, books, records, and other evidence, hold hearings, compel the attendance of witnesses, administer oaths, and take the testimony of any person under oath, concerning any trade practice;

* * * * *

(10) publish rules and regulations governing the Department's procedures, developed by the Director in accordance with the District of Columbia Administrative Procedure Act (sections 1-1501 et seq.);

* * * * *

(15) issue rules that interpret, define, state general policy, or prescribe requirements to prevent unfair, deceptive, and unlawful trade practices as set forth in section 28-3904;

(16) appoint private attorneys from the District of Columbia bar, who shall take action in the name of the Department, and shall promulgate regulations implementing this provision, in order to assist in the enforcement of any consumer complaint.

* * * * *

(c) The Department may not:

* * * * *

(2) apply the provisions of section 28-3905 to:

* * * * *

(D) a television or radio broadcasting station or publisher or printer of a newspaper, magazine, or other form of printed advertising, which broadcasts, publishes, or prints an advertisement which violates District law, except insofar as such station, publisher or printer engages in a trade practice which violates District law in selling or offering for sale its own goods or services, or has knowledge of the advertising being in violation of District law; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(w), 44 DCR 1271; Apr. 29, 1998, D.C. Law 12-86, § 1301(b), 45 DCR 1172.)

Effect of amendments.

D.C. Law 11-255 validated previously made stylistic corrections in (a)(10) and (c)(2)(D).

D.C. Law 12-86 inserted "in its discretion" in the introductory language of (a); rewrote (a)(1) and (2); and added (a)(16).

Temporary amendment of section. — Section 2 of D.C. Law 12-117 amended (a) to read as follows:

"(a) The Department, in its discretion, may:

*****

"(15) issue rules that interpret, define, state general policy, or prescribe requirements to prevent unfair, deceptive, and unlawful trade practices as set forth in section 28-3904.

"(16) Repealed."

Section 4(b) of D.C. Law 12-117 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Omnibus Regulatory Reform Amendment Act of 1998 Emergency Repealer Act of 1998 (D.C. Act 12-297, March 4, 1998, 45 DCR 1773), and see § 2 of the Omnibus Regulatory Reform Congressional Review Emergency Repealer Act of 1998 (D.C. Act 12-387, July 13, 1998, 45 DCR 4792).

For temporary amendment of section, see § 2 of the Omnibus Regulatory Reform and Alcoholic Beverage Control DC Arena Clarifying Emergency Amendment Act of 1999 (D.C. Act 13-1, January 29, 1999, 46 DCR 2284).

Section 4(a) of D.C. Act 13-1 provides for the application of § 2.

Legislative history of Law 11-255. — See note to § 28-3901.

Legislative history of Law 12-86. — See note to § 28-3902.

Legislative history of Law 12-117. — Law 12-117, the "Omnibus Regulatory Reform Amendment Act of 1998 Temporary Repealer Act of 1998," was introduced in Council and assigned Bill No. 12-526. The Bill was adopted on first and second readings on February 3, 1998, and March 3, 1998, respectively. Signed by the Mayor on March 18, 1998, it was assigned Act No. 12-316 and transmitted to both Houses of Congress for its review. D.C. Law 12-117 became effective on June 11, 1998.

Cited in Diamond v. Davis, App. D.C., 680 A.2d 364 (1996).

§ 28-3904. Unlawful trade practices.

It shall be a violation of this chapter, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

* * * * *

(r) make or enforce unconscionable terms or provisions of sales or leases; in applying this subsection, consideration shall be given to the following, and other factors:

* * * * *

(4) that the person contracted for or received separate charges for insurance with respect to credit sales with the effect of making the sales, considered as a whole, unconscionable; and

(5) that the person has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reasons of age, physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreement, or similar factors;

* * * * *

(y) violate any provision of the District of Columbia Consumer LayAway Plan Act (section 28-3818);

(z) violate any provision of the Rental Housing Locator Consumer Protection Act of 1979 (section 28-3819) or, if a rental housing locator, to refuse or fail to honor any obligation under a rental housing locator contract;

(z-1) violate any provision of Chapter 46 of this title;

(aa) violate any provision of sections 36-1004, 36-1005, 36-1006, and 36-1007;

* * * * *

(cc) violate any provision of the Real Property Credit Line Deed of Trust Act of 1987; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(x), 44 DCR 1271.)

Effect of amendments.

D.C. Law 11-255 validated previously made stylistic corrections in (r)(4) and (5), (y), (z), (z-1), (aa), and (cc).

Legislative history of Law 11-255. — See note to § 28-3901.

Applicability.

Plaintiff who claimed that defendant publishers violated the Consumer Protection and Procedures Act when they rejected her unsolicited manuscripts and research proposals was not a "consumer" within the meaning of this section because her claims did not arise from the purchase, lease, or receipt of consumer goods or services. Slaby v. Fairbridge, 3 F. Supp. 2d 22 (D.D.C. 1998).

Federal filed tariff doctrine. — Plaintiffs' claims concerning a telecommunication company's unfair trade practices, fraud, negligence, breach of contract, and unjust enrichment, all based on District of Columbia statutory and common law, were dismissed for failing to state a claim for which relief can be granted in light of the federal filed tariff doctrine. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Pleadings. — A claim based upon this section must be pleaded with particularity under Federal Rules of Civil Procedure 9(b), because they are akin to allegations of fraud. Witherspoon v. Philip Morris Inc., 964 F. Supp. 455 (D.D.C. 1997).

Knowledge of consumer.

A telecommunication company's practice of rounding it's billing up to the next highest minute on advertisements that are sent to consumers and not disclosing the precise length of long distance calls on the bills qualify as "material facts," but there is no tendency to mislead, without which there can be no violation of the statute; reasonable consumers would not assume that each of their long distance calls ended precisely on the minute, and they therefore know that the carrier is either rounding up or rounding down. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Failure to allege deception. — Customer failed to state a claim that the defendant violated the District of Columbia Consumer Protection Act, § 28-3901 et seq., because she did not adequately allege that the defendant's billing practices actually deceived her or would be capable of deceiving any reasonable customer. Alicke v. MCI Communications Corp., 111 F.3d 909 (D.C. Cir. 1997).

§ 28-3905. Complaint procedures.

* * * * *

(b) The Director shall investigate each such complaint and determine:

* * * * *

(2) whether the trade practice which occurred violates any statute, regulation, rule of common law, or other law, of the District of Columbia.

(b-1) In carrying out an investigation and determination pursuant to subsection (b) of this section, the Director shall consult the respondent and such other available sources of information, and make such other efforts, as are appropriate and necessary to carry out such duties.

* * * * *

(d) The director shall determine that there are, or are not, reasonable grounds to believe that a trade practice, in violation of a law of the District of Columbia within the jurisdiction of the Department, has occurred in any part or all of the case. The Director may find that there are not such reasonable grounds for any of the following reasons:

* * * * *

(2) in case paragraph (1) of this subsection does not apply, no trade practice occurred in violation of any law of the District;

* * * * *

(5) the complainant and respondent, to the Director's knowledge, have themselves reached an agreement which settles the case; or

(6) the complainant can no longer be located.

(d-1) The Director may dismiss any part or all of a case to which one or more of the reasons stated in subsection (d) of this section apply. The Director shall inform all parties in writing of the determination, and, if any part or all of the case is dismissed, shall specify which of the reasons in this subsection applies to which part of the case, and such other detail as is necessary to explain the dismissal.

(e) The Director may attempt to settle, in accordance with subsection (h) of this section, each case for which reasonable grounds are found in accordance with subsection (d-1) of this section. After the Director's determination as to whether the complaint is within the Department's jurisdiction, in accordance with subsection (d-1) of this section, the Director shall:

* * * * *

(2) dismiss the case in accordance with subsection (h)(2) of this section;

* * * * *

(f) When the case is transmitted to the Office of Adjudication, the Chief of the Office of Compliance shall sign, and serve the respondent, the Department's summons to answer or appear before the Office of Adjudication. Not less than 15 nor more than 90 days after such transmittal, the case shall be heard. The case shall proceed under section 10 of the District of Columbia Administrative Procedure Act (section 1-1509). The Office of Adjudication may, without delaying its hearing or decision, attempt to settle the case pursuant to subsection (h) of this section, and has discretion to permit any stipulation or consent decree the parties agree to. The Director shall be a party on behalf of the complainant. Applications to intervene shall be decided as may be proper or required by law or rule. Reasonable discovery shall be freely allowed. Any finding or decision may be modified or set aside, in whole or part, before a notice of appeal is filed in the case, or the time to so file has run out.

(g) If, after hearing the evidence, the Office of Adjudication decides a trade practice occurred in which the respondent violated a law of the District of

Columbia within the jurisdiction of the Department, such Office of Adjudication shall issue an order which:

* * * * *

(5) may include such other findings, stipulations, conditions, directives, and remedies including punitive damages, treble damages, or reasonable attorney's fees, as are reasonable and necessary to identify, correct, or prevent the conduct which violated District law; and

* * * * *

(h)(1) At any time after reasonable grounds are found in accordance with subsection (d) of this section, the respondent, the Department (represented by (i) the Director prior to transmittal to the Office of Adjudication and after an order issued pursuant to subsection (f) of this section has been appealed, and (ii) the Office of Adjudication after transmittal to the Office of Adjudication and prior to such appeal), and the complainant, may agree to settle all or part of the case by a written consent decree which may:

* * * * *

(D) bar the Department from further action in the case, or a part thereof; or

* * * * *

(3) A consent decree described in paragraph (1) of this subsection may be modified by agreement of the Department, complainant and respondent.

(i)(1) An aggrieved party may appeal to the District of Columbia Court of Appeals after:

(A) the Office of Adjudication decides a case pursuant to subsection (f) of this section;

(B) all parts of a case have been dismissed by operation of subsection (d) or (e) of this section; or

(C) the Director dismisses an entire case in accordance with subsection (h)(2) of this section.

(1A) Such appeals shall be conducted in accordance with the procedures and standards of section 11 of the District of Columbia Administrative Procedure Act (section 1-1510), and take into account the procedural duties placed upon the Department in this section and all actions taken by the Department in the case.

(2) An aggrieved party may appeal any ruling of the Office of Adjudication under subsection (j) of this section to the Superior Court of the District of Columbia.

(3)(A) Any person found to have executed a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department:

(i) shall be liable to the Department for a civil penalty of not exceeding $1000.00 for each violation enumerated in an order pursuant to subsection (g)(3) of this section; and

(ii) may be assessed and made liable to the Department for a civil penalty of not exceeding $1000.00 for each violation or failure to adhere to a provision, of an order described in subsection (f), (g), or (j) of this section or a consent decree described in subsection (h) of this section.

(B) The Department, the complainant, or the respondent may sue in the Superior Court of the District of Columbia for a remedy, enforcement, or assessment or collection of a civil penalty, when any violation, or failure to adhere to a provision of a consent decree described in subsection (h) of this section, or an order described in subsection (f), (g), or (j) of this section, has occurred. The Department shall sue in that Court for assessment of a civil penalty when an order described in subsection (g) of this section has been issued and become final. A failure by the Department or any person to file suit or prosecute under this subparagraph in regard to any provision or violation of a provision of any consent decree or order, shall not constitute a waiver of such provision or any right under such provision. The Court shall levy the appropriate civil penalties, and may order, if supported by evidence, temporary, preliminary, or permanent injunctions, damages, treble damages, reasonable attorney's fees, consumer redress, or other remedy. The Court may set aside the final order if the Court determines that the Department of Consumer and Regulatory Affairs lacked jurisdiction over the respondent or that the complaint was frivolous. If, after considering an application to set aside an order of the Department of Consumer and Regulatory Affairs, the Court determines that the application was frivolous or that the Department of Consumer and Regulatory Affairs lacked jurisdiction, the Court shall award reasonable attorney's fees.

* * * * *

(j) If, at any time before notice of appeal from a decision made according to subsection (f) of this section is filed or the time to so file has run out, the Director believes that legal action is necessary to preserve the subject matter of the case, to prevent further injury to any party, or to enable the Department ultimately to order a full and fair remedy in the case, the Chief of the Office of Compliance shall present the matter to the Office of Adjudication, which may issue a cease and desist order to take effect immediately, or grant such other relief as will assure a just adjudication of the case, in accordance with such beliefs of the Director which are substantiated by evidence. The Office of Adjudication's ruling may be appealed to court within 7 days of notice thereof on the Director, respondent, and complainant.

(k)(1) Any consumer who suffers any damage as a result of the use or employment by any person of a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

(A) a civil fine, payable to the Department, not to exceed $500 per violation;

(B) treble damages, or $1,500 per violation, whichever is greater, payable to the consumer;

(C) reasonable attorney's fees;

(D) punitive damages; and
(E) any other relief which the court deems proper.

* * * * *

(3) Any written decision made pursuant to subsection (f) of this section is admissible as prima facie evidence of the facts stated therein.

* * * * *

(n) There shall be established a Consumer Protection Education Fund ("Fund"). All monies awarded to or paid to the Department by operation of this section, including final judgements, consent decrees, or settlements reduced to final judgements, shall be paid into the Fund in order to further the purpose of this chapter as enumerated in § 28-3901.

* * * * *

(p) The Director may file a complaint in accordance with subsection (a) of this section, on behalf of one or more consumers or as complainant, based on evidence and information gathered by the Department in carrying out this chapter. Persons not parties to but directly or indirectly intended as beneficiaries of an order described in subsection (f), (g), or (j) of this section, or a consent decree described in subsection (h) of this section, arising out of a complaint filed by the Director, may enforce such order or decree in the manner provided in subsection (i)(3)(B) of this section.

(q) At any hearing pursuant to subsection (f) or (j) of this section, a witness has the right to be advised by counsel present at such hearing. In any process under this section, the complainant and respondent may have legal or other counsel for representation and advice.

(r) All cases for which complaints were filed before March 5, 1981, may be presented to and heard by the Office of Adjudication notwithstanding the time limits previously provided in section 28-3905(d), 28-3905(e), and 28-3905(f) for the investigation and transmittal of cases to the Office of Adjudication, and for the hearing of cases by the Office of Adjudication. (1973 Ed., T. 28, Appx., § 6; July 22, 1976, D.C. Law 1-76, § 6, 23 DCR 1185; June 11, 1977, D.C. Law 2-8, § 4(b), 24 DCR 726; Sept. 6, 1980, D.C. Law 3-85, § 3(a), (d), 27 DCR 2900; Mar. 5, 1981, D.C. Law 3-159, §§ 2(b), (c), 3, 27 DCR 5147; Mar. 8, 1991, D.C. Law 8-234, § 2(f), 38 DCR 296; Feb. 5, 1994, D.C. Law 10-68, § 27(f), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 27(y), 44 DCR 1271; Apr. 29, 1998, D.C. Law 12-86, § 1301(c), 45 DCR 1172.)

Effect of amendments.

D.C. Law 11-255 validated previously made stylistic corrections in (b)(2), (d)(2), (d)(5) and (6), (e), (e)(2), (f), (g)(5), (h)(1), (h)(1)(D), (h)(3), (i)(1)(A), through (C), (i)(2), (i)(3)(A)(i) and (ii), (i)(3)(B), (j), (k)(3), (p), (q), and (r).

D.C. Law 12-86 rewrote the introductory language of (d) and (e); in (k)(1), rewrote (A), (B), (C), and (D), and added (E); and rewrote (n).

Legislative history of Law 11-255. — See note to § 28-3901.

Legislative history of Law 12-86. — See note to § 28-3902.

Scope and effect of chapter. — The District of Columbia Consumer Protection Procedures Act establishes the Department of Consumer and Regulatory Affairs as the consumer protection agency of the D.C. Government and sets up procedures for the agency to investigate and remedy consumer complaints; it enumerates a broad array of "unfair trade practices" and provides mechanisms for consumers to pursue both administrative and judicial reme-

dies. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Federal filed tariff doctrine. — Plaintiffs' claims concerning a telecommunication company's unfair trade practices, fraud, negligence, breach of contract, and unjust enrichment, all based on District of Columbia statutory and common law, were dismissed for failing to state a claim for which relief can be granted in light of the federal filed tariff doctrine. Bootel v. MCI Telecommunications Corp., 125 WLR 97 (Super. Ct. 1997).

Cited in Diamond v. Davis, App. D.C., 680 A.2d 364 (1996); Goda v. Abbott Lab., 125 WLR 1117 (Super. Ct. 1997).

§ 28-3907. Advisory Committee on Consumer Protection.

* * * * *

(b) The Committee shall:

* * * * *

(3) monitor the performance and organization of the Office, by quantitative and qualitative methods, and make recommendations and criticisms, based thereon; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(z), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (b)(3).

Legislative history of Law 11-255. — See note to § 28-3901.

CHAPTER 40. HEARING AID DEALERS AND CONSUMERS.

§ 28-4001. Definitions.

As used in this chapter, the term —

* * * * *

(9) "registrant" means a hearing aid dispenser, audiologist, or otolaryngologist who engages in the practice of fitting and selling hearing aids and who has registered pursuant to section 28-4003.

(10) "sell" or "sale" means any transfer of title or of the right of use by sale, conditional sales contract, lease, bailment, hire-purchase, or any other means, excluding wholesale transactions of dealers and distributors.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(aa), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (9) and (10).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28-4003. Registration.

* * * * *

(j) Certificates of registration issued under this section shall be issued as a Class A Inspected Sales and Services endorsement to a master business license under the master business license system as set forth in subchapter I-A of Chapter 28 of Title 47. (1973 Ed., T. 28, Appx., § 54; Oct. 26, 1977, D.C. Law 2-33, § 4, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(b), 34 DCR 6847; Apr. 20, 1999, D.C. Law 12-261, § 2003(u), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (j).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 28-4005. Minimal procedures.

(a) Each hearing aid sale shall be accompanied by a receipt that includes:

* * * * *

(9) the following statements in ten (10)-point type or larger:

* * * * *

(B) "No hearing aid may be sold to you without a prior medical examination"; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(bb), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic correction in (a)(9)(B).

Legislative history of Law 11-255. — See note to § 28-4001.

§ 28-4006. Grounds for revocation and suspension.

* * * * *

(c) Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this chapter, or any rules or regulations issued under the authority of this chapter, pursuant to Chapter 27 of Title 6. Adjudication of any infraction of this chapter shall be pursuant to Chapter 27

of Title 6. (1973 Ed., T. 28, Appx., § 57; Oct. 26, 1977, D.C. Law 2-33, § 7, 24 DCR 3726; Sept. 6, 1980, D.C. Law 3-85, § 3(b), (e), 27 DCR 2900; Dec. 10, 1987, D.C. Law 7-46, § 2(d), 34 DCR 6847; Mar. 8, 1991, D.C. Law 8-237, § 19, 38 DCR 314; Apr. 9, 1997, D.C. Law 11-255, § 27(cc), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (c).

Legislative history of Law 11-255. — See note to § 28-4001.

CHAPTER 45. RESTRAINTS OF TRADE.

§ 28-4502. Contract, combination, or conspiracy to restrain trade.

Cited in Venture Holdings Ltd. v. Carr, App. D.C., 673 A.2d 686 (1996); In re Kerr, App. D.C., 675 A.2d 59 (1996); Goda v. Abbott Lab., 125 WLR 1117 (Super. Ct. 1997).

§ 28-4505. Civil investigative demand.

* * * * *

(k) Any procedure, other than an action to enforce a demand pursuant to subsection (h) of this section, or testimony taken or material produced under this section or voluntarily in the course of an investigation shall be exempt from the provisions of the District of Columbia Freedom of Information Act (sections 1-1521 et seq.) and shall be kept confidential by the Corporation Counsel before bringing an action against a person under this chapter for the violation under investigation, unless confidentiality is waived by the person who has testified, answered interrogatories, or produced material: except, that testimony taken or material or information produced under this section may be disclosed by the Corporation Counsel to any officer or employee of any federal or state law enforcement agency upon the prior certification of an officer of any such federal or state law enforcement agency that such testimony, material, or information will be maintained in confidence and will be used only for official law enforcement purposes.

(l) Unless otherwise authorized or required by law, any employee of the District of Columbia who shall intentionally disclose information kept confidential by subsection (k) of this section shall be guilty of a misdemeanor punishable by a fine up to $500. (Mar. 5, 1981, D.C. Law 3-169, § 2, 27 DCR 5368; Apr. 9, 1997, D.C. Law 11-255, § 27(dd), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (k) and (l).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28-4507. Damages and injunctive relief for injuries to or within the District of Columbia.

* * * * *

(c)(1) In any action brought under subsection (b) of this section, the Corporation Council shall, at such times, in such manner, and with such content as the court may direct, cause notice to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court shall direct further notice to such person or persons according to the circumstances of the case.

(2) Any person on whose behalf an action is brought under subsection (b) of this section may elect to exclude from adjudication the portion of the District of Columbia claim for monetary relief attributable to that person by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (1) of this subsection.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 27(ee), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (c)(1) and (2).

Legislative history of Law 11-255. — See note to § 28-4506.

§ 28-4508. Relief for private parties.

Class actions. — A class action is not in conflict with the requirement of § 28-4509(a), that the indirect purchaser individually prove "payment of all or any part of any overcharge" in order to be deemed "injured"; class damages may be reckoned on a classwide basis and the individual member, who has qualified as "injured" under § 28-4509(a), is allowed individual damages under subsection (c) of this section pursuant to the "ratio" payout specified in that section. Goda v. Abbott Lab., 125 WLR 1117 (Super. Ct. 1997).

Finding that common questions of law and fact predominated over individual questions, the court certified a class action suit charging a horizontal, price-fixing conspiracy by pharmaceutical manufacturers, although the court structured the action in subclasses and extended Medicaid recipients and members of certain health plans. Goda v. Abbott Lab., 125 WLR 1117 (Super. Ct. 1997).

Cited in Venture Holdings Ltd. v. Carr, App. D.C., 673 A.2d 686 (1996).

§ 28-4509. Indirect purchasers.

Class actions. — A class action is not in conflict with the requirement of subsection (a) of this section, that the indirect purchaser individually prove "payment of all or any part of any overcharge" in order to be deemed "injured"; class damages may be reckoned on a classwide basis and the individual member, who has qualified as "injured" under subsection (a) of this section, is allowed individual damages under § 28-4508(c) pursuant to the "ratio" payout specified in that section. Goda v. Abbott Lab., 125 WLR 1117 (Super. Ct. 1997).

CHAPTER 46. CONSUMER CREDIT SERVICE ORGANIZATIONS.

§ 28-4602. Registration statement.

(a) A consumer credit service organization that operates in the District shall:

* * * * *

(2) On a form prescribed by the Mayor, file a registration statement with the Mayor.

* * * * *

(c) If, in the opinion of the Mayor, the registration statement fails to disclose sufficient information required by this chapter or the rules issued pursuant to this chapter, the registrant shall file in writing any additional information requested by the Mayor. The Mayor shall not accept the registration statement until all the requested information is furnished. (Mar. 8, 1991, D.C. Law 8-236, § 3, 38 DCR 306; Apr. 9, 1997, D.C. Law 11-255, § 27(ff), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (a)(2) and (c).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 28-4603. Prohibited acts.

A consumer credit service organization shall not:

(1) Charge or receive money or other valuable consideration prior to completion of the services the consumer credit service organization has agreed to perform for a consumer, unless the consumer credit service organization has obtained a surety bond or established a trust account as required by § 28-4604;

* * * * *

(4) In connection with the offer or sale of the services:

(A) Make or use a false or misleading representation;

(B) Fail to disclose a material fact, policy, or method; or

(C) Directly or indirectly engage in an act or course of business to defraud or deceive a consumer;

* * * * *

(6) Attempt to waive any provision of this chapter or coerce, influence, or direct a consumer to waive any provision of this chapter or any rule issued pursuant to this chapter; or

(7) Fail or refuse to comply with any provision of this chapter or any rule issued pursuant to this chapter. (Mar. 8, 1991, D.C. Law 8-236, § 4, 38 DCR 306; Apr. 9, 1997, D.C. Law 11-255, § 27(gg), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (1), (4), (6) and (7).

Legislative history of Law 11-255. — See note to § 28-4602.

§ 28-4608. Rulemaking.

(a) The Mayor shall issue proposed rules, pursuant to subchapter I of Chapter 15 of Title 1, to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed rules shall be deemed approved. Nothing in this section shall affect any requirements imposed upon the Mayor by subchapter I of Chapter 15 of Title 1.

(b) The proposed rules shall include, but not be limited to the following:

(1) Registration requirements;

(2) Sample disclosure provisions;

(3) Contract and notice of cancellation forms; and

(4) A schedule of civil fines.

(c) The Mayor may issue emergency rules without prior Council approval, which shall be effective for not more than 90 days and are consistent with subchapter I of Chapter 15 of Title 1. (Mar. 8, 1991, D.C. Law 8-236, § 10, 38 DCR 306; Apr. 9, 1997, D.C. Law 11-255, § 27(hh), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (a), (b) and (c).

Legislative history of Law 11-255. — See note to § 28-4602.

CHAPTER 47. UNIFORM PRUDENT INVESTOR ACT.

§ 28-4701. Prudent investor rule.

(a) Except as provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in §§ 28-4702 through 28-4709.

(b) The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust. (Mar. 26, 1999, D.C. Law 12-187, § 2(a), 45 DCR 7802.)

Cross references. — As to the Uniform Management of Institutional Funds, see § 32-401.

Legislative history of Law 12-187. — Law 12-187, the "Uniform Prudent Investor Act of 1998," was introduced in Council and assigned Bill No. 12-154, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 2, 1998, it was assigned Act No. 12-458 and transmitted to both Houses of Congress for its review. D.C. Law 12-187 became effective on March 26, 1999.

§ 28-4702. Standard of care; portfolio strategy; risk and return objectives.

(a) A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(c) Among the circumstances relevant to the trust or its beneficiaries that a trustee shall consider in investing and managing the trust assets are the following:

(1) General economic conditions;

(2) The possible effect of inflation or deflation;

(3) The expected tax consequences of investment decisions or strategies;

(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(5) The expected total return from income and the appreciation of capital;

(6) Other resources of the beneficiaries;

(7) Needs for liquidity, for regularity of income, and for preservation or appreciation of capital; and

(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(d) A trustee shall take reasonable steps to verify facts relevant to the investment and management of trust assets.

(e) Subject to the standards of this chapter, a trustee may invest in any kind of property or type of investment.

(f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise. (Mar. 26, 1999, D.C. Law 12-187, § 3, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4703. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of

the trust are better served without diversifying. (Mar. 26, 1999, D.C. Law 12-187, § 4, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4704. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter. (Mar. 26, 1999, D.C. Law 12-187, § 5, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4705. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries. (Mar. 26, 1999, D.C. Law 12-187, § 6, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4706. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries. (Mar. 26, 1999, D.C. Law 12-187, § 7, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4707. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee. (Mar. 26, 1999, D.C. Law 12-187, § 8, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4708. Reviewing compliance.

The prudent investor rule expresses a standard of conduct, not a particular outcome. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action. (Mar. 26, 1999, D.C. Law 12-187, § 9, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4709. Delegation of investment and management functions.

(a) A trustee may delegate to an agent investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of subsection (a) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of the District of Columbia, an agent submits to the jurisdiction of the courts of the District of Columbia. (Mar. 26, 1999, D.C. Law 12-187, § 10, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4710. Language invoking standard of chapter.

The following terms or comparable language in a trust instrument, unless otherwise limited or modified by the instrument, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule". (Mar. 26, 1999, D.C. Law 12-187, § 11, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4711. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the District of Columbia and states enacting it. (Mar. 26, 1999, D.C. Law 12-187, § 12, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

§ 28-4712. Application to existing relationships.

This chapter applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this chapter governs only decisions or actions occurring after that date. (Mar. 26, 1999, D.C. Law 12-187, § 13, 45 DCR 7802.)

Legislative history of Law 12-187. — See note to § 28-4701.

References in text. — The "effective date" of this chapter, referenced in this section is March 26, 1999.

TITLE 29. CORPORATIONS.

CHAPTER 3. BUSINESS CORPORATIONS (1954).

§ 29-301. Short title.

Section references. — This section is referred to in §§ 35-3744 and 29-1143.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. Act 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Act 12-203 provided for the application of the act.

§ 29-304. General powers.

Defense of misconduct using corporate funds. — Defendant corporate officers could not commit misconduct in office in order to depose corporation's chairman and insure that he never reached his entitled position of majority shareholder status and then defend those actions against a legal challenge brought by the person wronged with corporate funds. Haft v. Haft, 124 WLR 1825 (Super. Ct. 1996).

§ 29-305. Power of corporation to acquire its own shares.

A corporation shall have power to purchase, take, receive, or otherwise acquire, hold, own, pledge, transfer, or otherwise dispose of its own shares; provided, that it shall not purchase, either directly or indirectly, its own shares when its net assets are less than the sum of its stated capital, its paid-in surplus, any surplus arising from unrealized appreciation in value or revaluation of its assets and any surplus arising from surrender to the corporation of any of its shares, or when by so doing its net assets would be reduced below such sum. Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of:

* * * * *

(3) Paying dissenting shareholders entitled to payment for their shares under the provisions of this chapter; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (3).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 29-307. Defense of ultra vires.

No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

* * * * *

(2) In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (2).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-308. Corporate name.

The corporate name:

* * * * *

(3) Shall not be the same as, or deceptively similar to, the name of any domestic corporation, or that of any corporation organized under any act of Congress authorizing the formation of corporations under the laws of the District of Columbia, or that of any corporation created pursuant to any special act of Congress to transact business in the District of Columbia, or that of any foreign corporation authorized to transact business in the District of Columbia, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(c), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (3).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-309. Reserved name.

(a) The exclusive right to the use of a corporate name may be reserved by:

* * * * *

(5) Any foreign corporation authorized to transact business in the District of Columbia and intending to change its name; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(d), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (a)(5).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-310. Registered office and registered agent required.

Each corporation shall have and continuously maintain in the District of Columbia:

(1) A registered office which may be, but need not be, the same as its place of business; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(e), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (1).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-313. Shares — Power to issue; classes; par value; limitations, restrictions, or qualifications; voting power; preferred or special classes.

* * * * *

(b) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

* * * * *

(4) Having preference as to the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(f), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (b)(4).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-314. Same — Issuance of preferred or special classes in series.

(a) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation; provided, that all shares of the same class shall be identical except as to the following relative rights and preferences, in respect of any or all of which there may be variations between different series:

* * * * *

(6) The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion; and

* * * * *

(d) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file with the Mayor a statement setting forth:

* * * * *

(3) The date of adoption of such resolution; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(g), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made technical corrections in (a)(6) and (d)(3).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-318. Same — Determination of amount of stated capital.

(a) A corporation may determine that only a part of the consideration for which its shares may be issued, from time to time, shall be stated capital; provided, that in the event of any such determination:

* * * * *

(3) If the shares issued consist wholly of shares without par value, and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, then the stated capital represented by such shares shall be the total consideration received therefor less such part thereof as may be allocated to paid-in surplus; or

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(h), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (a)(3).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-320. Stock certificates — Representation of shares; signers; restrictions or limitations on transferability and on issuance of shares of more than 1 class; contents.

* * * * *

(d) Each certificate representing shares shall also state:

* * * * *

(3) The number and class of shares which such certificate represents; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(i), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (d)(3).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-348. Same — Procedure for filing.

(a) Duplicate originals of the articles of incorporation shall be delivered to the Mayor. If the Mayor finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

* * * * *

(2) File one of such duplicate originals in his office; and

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(j), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (a)(2).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-372. Same — Parent corporation and wholly owned subsidiary; effect of certificate of merger.

(a) Any corporation now or hereafter organized under the provisions of this chapter or existing under the laws of the District for the purpose of carrying on any kind of business authorized by this chapter, owning all of the stock of any other corporation now or hereafter organized under this chapter or existing under the laws of the District, or now or hereafter organized under the laws of any other jurisdiction of the United States, if the laws under which the other corporation is formed shall permit a merger as herein provided, may file, in duplicate original with the Mayor, a certificate of ownership in its name, signed by its president or a vice president, and setting forth a copy of the resolution of its board of directors to merge the other corporation, and to assume all of its obligations and the date of the adoption. If the Mayor finds that the certificate of ownership conforms to law, the Mayor shall, when all fees have been paid as prescribed in this chapter:

(1) Endorse on each of the duplicate originals the word "Filed," and the month, day, and year of the filing;

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 28(k), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (a)(1).

Legislative history of Law 11-255. — See note to § 29-305.

§ 29-372.3. Merger or consolidation — domestic corporation and partnerships.

(a) Any one or more domestic corporations may merge or consolidate with one or more domestic limited liability companies or limited liability companies of any state or states of the United States, and one or more domestic limited liability companies or limited liability companies of any state or states of the United States may merge with or consolidate into it, unless the laws of the state or states forbid such a merger of consolidation. The corporation or corporations and the one or more limited liability companies may merge with or into a corporation, which may be any one of the corporations, or they may merge with or into a limited liability company, which may be any one of the limited liability companies, or they may consolidate into a new corporation or limited liability company formed by the consolidation, which shall be a corporation or limited liability company of the District or any state of the United States which permits such a merger or consolidation, pursuant to an agreement of merger or consolidation, as the case may be, complying and approved in accordance with this section.

(b) Each corporation and limited liability company shall enter into a written plan of merger or consolidation. The plan shall state: (1) the terms and conditions of the merger or consolidation; (2) the mode of carrying the same into effect; (3) the manner of converting the shares of stock of each corporation and the interests of each limited liability company into shares, limited liability company interests, or other securities of the entity surviving or resulting from

the merger or consolidation, and if any shares of any corporation or any interests of any limited liability company are not to be converted solely into shares, limited liability company interests, or other securities of the entity surviving or resulting from such a merger or consolidation, the cash, property rights, or securities of any other corporation or entity which the holders of the shares or limited liability company interests are to receive in exchange for, or upon conversion of the shares or limited liability company interests and the surrender of any certificates evidencing them, which cash, property rights, or securities of any other corporation or entity may be in addition to or in lieu of shares, limited liability company interests, or other securities of the entity surviving or resulting from such a merger or consolidation; and (4) any details or provisions deemed desirable, including, without limiting the generality of the foregoing, a provision for the payment of cash in lieu of the issuance of fractional shares or interests of the surviving or resulting corporation or limited liability company. Any of the terms of the plan of merger or consolidation may be made dependent upon facts ascertainable outside of the plan, provided that the manner in which the facts shall operate upon the terms of the plan is clearly and expressly set forth in the plan of merger or consolidation.

(c) The plan required by subsection (b) of this section shall be adopted and approved by each of the corporations in the same manner as is provided in §§ 29-364 through 29-367 and, in the case of the limited liability companies, in accordance with their articles of organization or operating agreements and in accordance with the laws of the jurisdiction under which they are formed, as the case may be.

(d) Upon approval, articles of merger or consolidation shall be executed by each corporation, by its president or a vice-president, and by each limited liability company and shall set forth:

(1) The plan of merger or consolidation; and

(2) As to each party to the merger or consolidation, a statement that the plan of merger or consolidation was approved in accordance with the articles of incorporation, articles of organization or operating agreement, and applicable law.

(e) The articles of merger or consolidation shall be filed with the Mayor as provided in § 29-368 and shall become effective for all purposes of the laws of the District when and as provided in § 29-369 with respect to the merger or consolidation of domestic corporations.

(f) If the surviving or new entity is to be governed by the laws of any jurisdiction other than the Distict and intends to do business in the District, it shall comply with the provisions of District law with respect to foreign limited liability companies or foreign corporations, and in every case it shall file with the Mayor:

(1) An agreement that it may be served with process in the District in any proceeding for the enforcement of any obligation of any corporation or limited liability company that is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any District corporation against the surviving or new entity;

(2) An irrevocable appointment of the Mayor of the District as its agent to accept service of process in any proceeding pursuant to paragraph (1) of this subsection;

(3) An agreement that it will promptly pay to the dissenting shareholders of any District corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders; and

(4) The address of the registered agent to which the Mayor may mail a copy of any process against the surviving or new entity that may be served on the surviving or new entity.

(g) The effect of such a merger or consolidation shall be as provided in § 29-370 if the surviving or new entity is a corporation governed by the laws of the District. If the surviving or new entity is to be governed by the laws of any jurisdiction other than the District, the effect of such a merger or consolidation shall be as provided in § 29-370, except insofar as the laws of another jurisdiction provide otherwise. (Sept. 10, 1992, D.C. Law 9-144, § 72c, 39 DCR 4863, as added Apr. 9, 1997, D.C. Law 11-234, § 1206, 44 DCR 777.)

Effect of amendments. — D.C. Law 11-234 added this section, effective January 1, 1998.

Legislative history of Law 11-234. — Law 11-234, the "Uniform Partnership Act of 1996," was introduced in Council and assigned Bill No. 11-344, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-494 and transmitted to both Houses of Congress for its review. D.C. Law 11-234 became effective on April 9, 1997.

§ 29-398. Report of domestic corporation.

(a) Each corporation incorporated before April 15, 1996, shall file with the Mayor on or before April 15, 1997, and on or before April 15th of each 2nd year thereafter, if there has been no change in material facts, a report setting forth:

* * * * *

(a-1) Each corporation incorporated after April 14, 1996, shall file with the Mayor on or before April 15th of the year after its incorporation, and on or before April 15th of each second year thereafter, if there has been no change in material facts, a report setting forth the information specified in subsection (a) of this section.

(b) Such 2-year report shall be made on forms prescribed and furnished by the Mayor, and the information therein contained shall be given as of the date of the execution of the report.

* * * * *

(Apr. 9, 1997, D.C. Law 11-185, § 2(a), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 rewrote the introductory paragraph of (a); inserted (a-1); and substituted "2-year report" for "5-year report" in (b).

Temporary amendment of section. — Section 2(a) of D.C. Law 11-150 amended the introductory paragraph of (a) to read as follows:

"(a) Each corporation shall file with the Mayor, on or before May 15th of each fifth year from the date of incorporation, if there has been no change in material facts, a 5-year report setting forth:".

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 2(a) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency

Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125) and § 2(a) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

For temporary suspension of all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for the application of the act.

Legislative history of Law 11-150. — Law 11-150, the "Business and Nonprofit Corporation Five-Year Annual Report Suspension Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-654. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 20, 1996, it was assigned Act No. 11-274 and transmitted to both Houses of Congress for its review. D. C. Law 11-150 became effective on July 20, 1996.

Legislative history of Law 11-185. — Law 11-185, the "Business Corporation Two-Year Report Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-580, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-338 and transmitted to both Houses of Congress for its review. D.C. Law 11-185 became effective on April 9, 1997.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-399.13. Same — Annual report; contents.

(a) Each foreign corporation authorized to transact business in the District shall file on or before April 15, 1997, and on or before April 15th of each 2nd year thereafter, if there has been no change in materials facts, a report setting forth:

* * * * *

(a-1) Each foreign corporation authorized to transact business in the District beginning after April 15, 1997, shall file on or before April 15th of the year after such authorization and on or before April 15th of each second year thereafter, if there has been no change in material facts, a report setting forth the information specified in subsection (a) of this section;

(b) Such 2-year report shall be made on forms prescribed and furnished by the Mayor and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, vice-president, secretary, assistant secretary, or treasurer, and verified by the officer making the report, and the corporate seal shall be thereto affixed. (June 8, 1954, 68 Stat. 224, ch. 269, § 112; July 23, 1959, 73 Stat. 242, Pub. L. 86-106, § 16; 1973 Ed., § 29-933m; Sept. 8, 1995, D.C. Law 11-39, § 2(b), 42 DCR 3273; Apr. 9, 1997, D.C. Law 11-185, § 2(b), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 rewrote the introductory paragraph of (a); inserted (a-1); and substituted "2-year report" for "5-year report" in (b).

Temporary amendment of section. — Section 2(b) of D.C. Law 11-150 amended the introductory paragraph of (a) to read as follows:

"(a) Each foreign corporation authorized to transact business in the District shall file on or before May 15th of each fifth year from the date of authorization to do business in the District of Columbia, if there has been no change in material facts, a 5-year report setting forth:"

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 2(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125), and § 2(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

For temporary suspension of all references in section to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-150. — See note to § 29-398.

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-399.16. Revocation of certificate of authority.

(a) The certificate of authority of a foreign corporation to transact business in the District may be revoked by the Mayor when he finds that:

* * * * *

(6) The corporation has failed to file its 2-year report as required by this chapter;

* * * * *

(b) No certificate of authority of a foreign corporation shall be revoked by the Mayor unless:

* * * * *

(2) The corporation, prior to such revocation and as the case may be, shall fail to submit satisfactory evidence that said certificate was not procured by such fraud, or that the corporation has not exceeded or abused such authority, or shall fail to pay such fees, charges, or penalties, or to appoint a registered agent in the District, or to file the required statement of change of registered

office or registered agent, or to file such 2-year report, or to file a statement showing that it has transacted business in the District within a period of 2 years, or to file a copy of any such amendment to its articles of incorporation, or shall fail to submit satisfactory evidence that a misrepresentation of a material matter was not made in any such application, report, affidavit, or other document. (June 8, 1954, 68 Stat. 226, ch. 269, § 115; Sept. 2, 1957, 71 Stat. 571, Pub. L. 85-254, § 28; 1973 Ed., § 29-934b; Sept. 8, 1995, D.C. Law 11-39, § 2(c), 42 DCR 3273; Apr. 9, 1997, D.C. Law 11-185, § 2(c), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 substituted "2-year report" for "5-year report" in (a)(6) and (b).

Emergency act amendments. — For temporary suspension of all references in section to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-399.22. Fees and charges.

* * * * *

(d) Each foreign or domestic corporation authorized to do business in the District of Columbia or organized, incorporated, or reincorporated under the provisions of this chapter shall pay a 2-year report fee of $500, which shall be paid at the time that the 2-year report, which is required of corporations under the provisions of this chapter, is filed.

(e) If the annual report fee of a domestic corporation is unpaid at the time that it is due, interest shall accrue on the 2-year report fee at the rate of 5% per month until the report fee is paid.

* * * * *

(Apr. 9, 1997, D.C. Law 11-185, § 2(d), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 substituted "2-year report fee of $200" for "5-year report fee of $500" in (d); and substituted "2-year report" for "5-year report" in (d) and (e).

Emergency act amendments. — For temporary suspension of all references in section to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements

shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-399.23. Effect of failure to pay 2-year report fee or to file annual report.

If any corporation incorporated or reincorporated under this chapter, or any foreign corporation having a certificate of authority issued under this chapter, shall fail or refuse to pay any 2-year report fee or fees payable under this chapter, or fail or refuse to file any 2-year report as required by this chapter then, in the case of a domestic corporation, the articles of incorporation shall be void and all powers conferred upon such corporation are declared inoperative, and, in the case of a foreign corporation, the certificate of authority shall be revoked and all powers conferred thereunder shall be inoperative. (June 8, 1954, 68 Stat. 230, ch. 269, § 122; 1973 Ed., § 29-937; Sept. 8, 1995, D.C. Law 11-39, § 2(e), 42 DCR 3273; Apr. 9, 1997, D.C. Law 11-185, § 2(e), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 substituted "2-year report" for "5-year report" twice; and deleted "for 2 consecutive years" preceding "fail or refuse" and following "by this chapter."

Emergency act amendments. — For temporary suspension of all references in section to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-399.24. Proclamation of revocation; effect of publication; extension of term of existence.

(a) On the second Monday in September of each year, the Mayor shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay any report fee or fees or failed or refused to file any report as required by this chapter for a report period next preceding June 30th in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

* * * * *

(Apr. 9, 1997, D.C. Law 11-185, § 2(f), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185, in (a), substituted "any report fee" for "any 5-year report fee" and substituted "any report as required by this chapter for a report period" for "any 5-year report as required by this chapter for 2 consecutive years."

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Cited in Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

§ 29-399.26. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Mayor that any corporation named in said proclamation has not failed or refused to pay report fees or file report for a reporting period, or has been inadvertently included in the list of corporations as so failing or refusing to pay report fees or file reports, the Mayor is authorized to correct such mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, into good standing with like effect as if such proclamation or revocation, as to such corporation, had not been issued. (June 8, 1954, 68 Stat. 231, ch. 269, § 125; 1973 Ed., § 938b; Apr. 18, 1996, D.C. Law 11-110, § 29(b), 43 DCR 530; Apr. 9, 1997, D.C. Law 11-185, § 2(g), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 substituted "refused to pay report fees or file [any] report for a reporting period" for "refused to pay any 5-year report fee or file any 5-year report for 2 consecutive years"; and substituted "refusing to pay report fees" for "refusing to pay 5-year report fees."

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

§ 29-399.28. Same — Procedure for reinstatement.

Cited in Hunter v. Ark Restaurants Corp., 3 F. Supp. 2d 9 (D.D.C. 1998).

§ 29-399.29. Penalties — Failure to file 2-year report on time.

Any corporation organized under this chapter or any foreign corporation having a certificate of authority under this chapter which fails or refuses to file the 2-year report required by this chapter to be filed on April 15th of each year shall pay a penalty of $25. (June 8, 1954, 68 Stat. 232, ch. 269, § 128; 1973 Ed., § 29-939; Sept. 8, 1995, D.C. Law 11-39, § 2(f), 42 DCR 3273; Apr. 9, 1997, D.C. Law 11-185, § 2(h), 43 DCR 4510.)

Effect of amendments.

D.C. Law 11-185 substituted "2-year report" for "5-year report."

Emergency act amendments. — For temporary suspension of all references in section to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $100, see § 2(c) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 2(c) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-185. — See note to § 29-398.

Preparation and payment of appropriate taxes. — Section 2(i) of D.C. Law 11-185 provides that nothing in the act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal taxes, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-398, 29-399.13, 29-399.16, 29-399.22, 29-399.23, and 29-399.29 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $100.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

CHAPTER 5. NONPROFIT CORPORATIONS.

§ 29-501. Short title.

Section references. — This chapter is referred to in §§ 31-2103 and 32-553.

Applicability — The plaintiffs could not obtain injunctive and declaratory relief against the pastor and current and former deacons of a church on the basis of the Nonprofit Corporation Act since there were no facts pled that demonstrated that the church either was organized under the act or had since elected to accept the provisions of the act. Kelsey v. Bay, App. D.C., 719 A.2d 1248 (1998).

§ 29-502. Definitions.

Cited in West v. Morris, App. D.C., 711 A.2d 1269 (1998).

§ 29-504. Purposes for corporate organization.

Corporations may be organized under this chapter for any lawful purpose or purposes including, but not limited to, 1 or more of the following or similar purposes: benevolent; charitable; religious; missionary; educational; scientific; research; literary; musical; social; athletic; patriotic; political; civic; professional, commercial, industrial, business, or trade association; mutual improvement; promotion of the arts; except that organizations subject to any of the provisions of the insurance laws of the District may not be organized under this chapter. (Aug. 6, 1962, 76 Stat. 267, Pub. L. 87-569, § 4; 1973 Ed., § 29-1004; Apr. 13, 1999, D.C. Law 12-217, § 3(a), 46 DCR 284.)

Effect of amendments. — D.C. Law 12-217 deleted "cooperative organizations or" following "except that."

Temporary amendment of section. — Section 3(a) of D.C. Law 11-265 deleted "cooperative organization or" following "except that."

Section 5(b) of D.C. Law 11-265 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3(a) of the Cooperative Association Emergency Amendment Act of 1996 (D.C. Act 11-483, January 13, 1997, 44 DCR 626), and see § 3(a) of the Cooperative Association Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-59, March 31, 1997, 44 DCR 2235).

Section 5 of D.C. Act 12-59 provides for the application of the act.

For temporary amendment of section, see § 3 of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. Act 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Act 12-203 provided for the application of the act.

Legislative history of Law 11-265. — Law 11-265, the "Cooperative Association Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-997. The Bill was adopted on first and second readings on December 3, 1996, and January 7, 1997, respectively. Signed by the Mayor on January 23, 1997, it was assigned Act No. 11-532 and transmitted to both Houses of Congress for its review. D.C. Law 11-265 became effective on April 25, 1997.

Legislative history of Law 12-217. — Law 12-217, the "Cooperative Association Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-384, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-532 and transmitted to both Houses of Congress for its review. D.C. Law 12-217 became effective on April 13, 1999.

§ 29-515. Same — Notice.

Church meeting. — Complaint failed to state a claim on which relief could be granted where plaintiff failed to establish he was a member of the church, or that he was entitled, under the church's articles of incorporation or by-laws, to notice of, or the right to participate in, the election of a new pastor. West v. Morris, App. D.C., 711 A.2d 1269 (1998).

§ 29-533. Effect of issuance of certificate of incorporation.

Cited in Schiff v. American Ass'n of Retired Persons, App. D.C., 697 A.2d 1193 (1997).

§ 29-556. Liquidation proceedings — Jurisdiction of court.

Jurisdiction to appoint receiver pendente lite. — The jurisdiction of the court to appoint a receiver pendente lite is independent of its jurisdiction to appoint a liquidating receiver; the only jurisdictional prerequisite to appointing a receiver pendente lite is that the court has before it proceedings to liquidate the assets and affairs of a corporation. Columbia Hosp. for Women Found. v. Bank of Tokyo-Mitsubishi, Ltd., 15 F. Supp. 2d 1 (D.D.C. 1997).

§ 29-557. Same — Procedure; hearing; authority of receivers; distribution of assets.

Jurisdiction to appoint receiver pendente lite. — The jurisdiction of the court to appoint a receiver pendente lite is independent of its jurisdiction to appoint a liquidating receiver; the only jurisdictional prerequisite to appointing a receiver pendente lite is that the court has before it proceedings to liquidate the assets and affairs of a corporation. Columbia Hosp. for Women Found. v. Bank of Tokyo-Mitsubishi, Ltd., 15 F. Supp. 2d 1 (D.D.C. 1997).

§ 29-584. Two-year report of domestic and foreign corporations — Contents.

(a) Each domestic corporation incorporated before January 1, 1998, and each foreign corporation authorized to conduct affairs in the District before January 1, 1998, shall prepare and submit on or before January 15, 1998, and on or before January 15th of each second year thereafter a report setting forth:

* * * * *

(a-1) Each domestic corporation incorporated after December 31, 1997, and each foreign corporation authorized to conduct affairs in the District after December 31, 1997, shall prepare and submit on or before January 15th of the year after its incorporation or the year after such authorization, as the case may be, as well as on or before January 15th of each second year thereafter, a report setting forth the information specified in subsection (a) of this section.

(b) The 2-year report shall be made on forms prescribed and furnished by the Mayor, and the information therein contained shall be given as of the date of the execution of the report. It shall be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, treasurer, or assistant treasurer, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation by such receiver or trustee. (Aug. 6, 1962, 76 Stat. 297, Pub. L. 87-569, § 83; 1973 Ed., § 29-1083; Sept. 8, 1995, D.C. Law 11-42, § 2(a), 42 DCR 3285; Apr. 9, 1997, D.C. Law 11-181, § 2(a), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181 substituted "before January 1, 1998, shall prepare and submit on or before January 15, 1998, and on or before January 15th of each 2nd year thereafter" for "shall prepare and submit every 5 years, if there has been no change in material facts" in the introductory paragraph of (a); inserted (a-1); and substituted "5-year report" for "2-year report" in (b).

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall

be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — Law 11-181, the "Nonprofit Corporation Two-Year Report Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-584, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-332 and transmitted to both Houses of Congress for its review. D.C. Law 11-181 became effective on April 9, 1997.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-585. Same — Procedure for filing.

The report of a domestic or foreign corporation shall be delivered to the Mayor on or before the 15th day of January in the year in which it is due, in accordance with § 29-584. Proof to the satisfaction of the Mayor that prior to the 15th day of January such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Mayor finds that such report conforms to law, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Mayor in sufficient time to be filed prior to the 1st day of July of the year in which it is due. (Aug. 6, 1962, 76 Stat. 298, Pub. L. 87-569, § 84; 1973 Ed., § 29-1084; Sept. 8, 1995, D.C. Law 11-42, § 2(b), 42 DCR 3285; Apr. 9, 1997, D.C. Law 11-181, § 2(b), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181 rewrote the first sentence; and substituted "15th day of January" for "15th day of April" in the second sentence.

Temporary amendment of section. — Section 3(a) of D.C. Law 11-150 amended the section to read as follows:

"The report of a domestic or foreign corporation shall be delivered to the Mayor on or before the 15th day of May in the 5th year in which its certificate of incorporation or certificate of authority, as the case may be, was issued by the Mayor. Proof to the satisfaction of the Mayor that prior to the 15th day of May such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the Mayor finds that such report conforms to law, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this chapter and returned to the Mayor in sufficient time to be filed prior to the 1st day of July of the year in which it is due."

Section 5(b) of D.C. Law 11-150 provides that

the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

Emergency act amendments.

For temporary amendment of section, see § 3(a) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125) and § 3(a) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — See note to § 29-584.

Legislative history of Law 11-150. — Law 11-150, the "Business and Nonprofit Corporation Five-Year Annual Report Suspension Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-654. The Bill was adopted on first and second readings on April 2, 1996, and May 7, 1996, respectively. Signed by the Mayor on May 20, 1996, it was assigned Act No. 11-274 and transmitted to both Houses of Congress for its review. D. C. Law 11-150 became effective on July 20, 1996.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 2(c) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-587. Proclamation of revocation; effect of publication.

(a) On the second Monday in September of each year, the Mayor shall issue a proclamation listing the names of all domestic corporations and all foreign corporations which have failed or refused to pay the 2-year report fee or fees or failed or refused to file the 2-year report as required by this chapter for a reporting period next preceding June 30th in the year in which such proclamation is issued and upon the issuance of such proclamation the articles of incorporation or the certificate of authority, as the case may be, shall be void and all powers thereunder inoperative without further proceedings of any kind.

* * * * *

(Apr. 9, 1997, D.C. Law 11-181, § 2(c), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181, in (a), substituted "the 2-year report" for "the 5-year report" twice, and substituted "a reporting period" for "2 consecutive years."

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year re-

porting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — See note to § 29-584.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-589. Correction of error in proclamation.

Whenever it is established to the satisfaction of the Mayor that any corporation named in the proclamation issued in accordance with § 29-587 has not failed or refused to pay the 2-year report fee or any report filing fees, or has been inadvertently included in the list of corporations as failing or refusing to pay the 2-year report fee or any report filing fees, the Mayor is authorized to correct the mistake by issuing a proclamation to that effect and restoring the articles of incorporation or certificate of authority, as the case may be, to good standing with like effect as if the proclamation or revocation, as to the corporation, was not issued. (Aug. 6, 1962, 76 Stat. 299, Pub. L. 87-569, § 88; 1973 Ed., § 29-1088; Sept. 8, 1995, D.C. Law 11-42, § 2(e), 42 DCR 3285; Apr. 9, 1997, D.C. Law 11-181, § 2(d), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181 substituted "the 2-year report" for "the 5-year report" twice.

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — See note to § 29-584.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-591. Same — Reinstatement; corporate name.

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-592. Penalties for failure to file 2-year report.

Each corporation, domestic, or foreign, that fails or refuses to file its 2-year report within the time prescribed by this act shall be subject to a penalty of $30 to be assessed by the Mayor. (Aug. 6, 1962, 76 Stat. 300, Pub. L. 87-569, § 91; 1973 Ed., § 29-1091; Sept. 8, 1995, D.C. Law 11-42, § 2(g), 42 DCR 3285; Apr. 9, 1997, D.C. Law 11-181, § 2(e), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181 substituted "the 2-year report" for "the 5-year report" and substituted "$30" for "$75."

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — See note to § 29-584.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-593. Fees for filing documents and issuing certificates.

(a) The Mayor shall charge and collect for:

* * * * *

(15) Filing any other statement or report, excluding a 2-year report, of a domestic or foreign corporation, $20;

(16) Indexing each document filed, except a 2-year report, $20;

* * * * *

(18) Furnishing a certificate as to the existence or nonexistence of a fact relating to a corporation, except a certificate of good standing, $20;

(19) Filing a 2-year report of a domestic or foreign corporation, $50.

(20) Furnishing a certificate of good standing, $10.

(21) Filing an amended report, $25.

* * * * *

(Apr. 9, 1997, D.C. Law 11-181, § 2(f), 43 DCR 4503.)

Effect of amendments.

D.C. Law 11-181 substituted "the 2-year report" for "the 5-year report" in (a)(15), (16), and (19); inserted "except a certificate of good standing" in (a)(18); substituted "$50" for "$100" in (a)(19); and added (a)(20) and (21).

Emergency act amendments. — For temporary suspension in section of references to 5-year reporting, filing, or payment of fees requirements until after December 31, 1996, at which time the 1-year or annual requirements shall be in effect and the annual report fee shall be $25, see § 3(b) of the Business and Nonprofit Corporation Five-Year Report Suspension Emergency Amendment Act of 1996 (D.C. Act 11-247, April 11, 1996, 43 DCR 2125).

For temporary suspension of the 5-year reporting provision, see § 3(b) of the Business and Nonprofit Corporation Five-Year Annual Report Suspension Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-307, August 1, 1996, 43 DCR 4208).

Section 5 of D.C. Act 11-307 provides for application of the act.

Legislative history of Law 11-181. — See note to § 29-584.

Preparation and payment of appropriate taxes. — Section 2(g) of D.C. Law 11-181 provided that nothing in that act shall be construed or interpreted as repealing or affecting any requirement of a domestic or foreign corporation to prepare and submit annual tax forms, or to pay any appropriate District or federal tax, as provided in accordance with the laws of the District of Columbia or the United States.

Temporary suspension of 5-year reporting, filing, or payment of fees requirements. — Section 3(b) of D.C. Law 11-150 provides that all references in §§ 29-584, 29-585, 29-587, 29-589, 29-591, 29-592, and 29-593 to 5-year reporting, filing, or payment of fees requirements shall be suspended until after December 31, 1996, until which time the 1-year or annual reporting, filing, or payment of fees requirements shall be in effect and the annual report fee shall be $25.

Section 5(b) of D.C. Law 11-150 provides that the act shall expire after 225 days of its having taken effect or on January 1, 1997, whichever occurs first.

§ 29-599.3. Acceptance of chapter — Procedure; vote required for approval; adoption by board of directors.

Any corporation which is organized and existing under the laws of the District of Columbia or under any special act of Congress on the date this chapter takes effect, and which is organized not for profit, or at the time this chapter takes effect, is organized under Chapter 11 of Title 29, and is without

authority to issue shares of stock, and is organized for a purpose or purposes for which a corporation may be organized under the provisions of this chapter may elect to avail itself of the provisions of this chapter in the following manner:

(1) Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation accept this chapter and directing that the question of such acceptance be submitted to a vote at a meeting of the members having voting rights which may be either an annual meeting or a special meeting. Written or printed notice setting forth the proposal to accept this chapter shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposal to elect to accept this chapter shall be adopted upon receiving at least two-thirds of the vote entitled to be cast by members present or represented by proxy at such meeting.

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 29, 44 DCR 1271; Apr. 13, 1999, D.C. Law 12-217, § 3(b), 46 DCR 284.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (1).

D.C. Law 12-217 inserted "or at the time this chapter takes effect, is organized under Chapter 11 of Title 29" in the introductory language.

Temporary amendment of section. — D.C. Law 11-265 inserted "or at the time this act takes effect, is organized under Chapter 11 of Title 29" in the introductory language.

Section 5(b) of D.C. Law 11-265 provides that the act shall expire after 225 days of its taking effect.

Emergency act amendments. — For temporary amendment of section, see § 3(b) of the Cooperative Association Emergency Amendment Act of 1996 (D.C. Act 11-483, January 13, 1997, 44 DCR 626), § 3(b) of the Cooperative Association Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-59, March 31, 1997, 44 DCR 2235), and § 3 of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Act 12-59 provides for the application of the act.

Section 5 of D.C. Law 12-203 provided for application of the act.

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

Legislative history of Law 11-265. — See note to § 29-504.

Legislative history of Law 12-217. — Law 12-217, the "Cooperative Association Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-384, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-532 and transmitted to both Houses of Congress for its review. D.C. Law 12-217 became effective on April 13, 1999.

CHAPTER 6. PROFESSIONAL CORPORATIONS.

§ 29-601. Short title.

Section references. — This section is referred to in §§ 47-2853.44 and 47-2853.45.

CHAPTER 8. INSTITUTIONS OF LEARNING.

§ 29-801. Incorporation — Number; filing and recordation of certificate; content.

Any 5 or more persons desirous of associating themselves for the purpose of establishing an institution of learning, may make, sign, and acknowledge, before any officer authorized to take acknowledgment of deeds in the District, and file in the office of the Recorder of Deeds, a certificate in writing, to be recorded in a book kept for that purpose and open to public inspection, in which shall be stated:

(1) The name or title by which the institution shall be known in law;

* * * * *

(Apr. 9, 1997, D.C. Law 11-255, § 30, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (1).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 29-815. License to confer degrees — Issuance by Educational Institution Licensure Commission required.

(a) No institution heretofore or hereafter incorporated under the provisions of this chapter shall have the power to confer any degree in the District of Columbia or elsewhere, nor shall any institution incorporated outside of the District of Columbia or any person or persons individually or as a partnership or association or otherwise, undertaking to confer any degree, operate in the District of Columbia, unless under and by virtue of a license from the Educational Institution Licensure Commission, which before granting any such license may require satisfactory evidence:

(1) That in the case of an individual or any unincorporated group of individuals he, or a majority of them, or in the case of an incorporated institution, a majority of the trustees, directors, or managers of said institution are persons of good repute and qualified to conduct an institution of learning;

(2) That any such degree shall be awarded only after such quantity and quality of work shall have been completed as are usually required by reputable institutions awarding the same degree; provided, that if more than one-half the requirements for any degree are earned by correspondence, or extramural study, such fact shall be conspicuously noted upon the diploma conferred; provided further, that no diploma shall be issued conferring a degree in

medicine or any healing art, or in dentistry, for study pursued or work done by correspondence;

(3) That applicants for said degree possess the usual high school qualifications at the time of their candidacy therefor; and

(4) That considering the number and character of the courses offered, the faculty is of reasonable number and properly qualified, and that the institution is possessed of suitable classroom, laboratory, and library equipment.

(b) Any license issued pursuant to this section shall be issued as a Class A Educational Services endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47 of the District of Columbia Code. (Mar. 3, 1901, ch. 854, § 586b; Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; 1973 Ed., § 29-415; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(1), 23 DCR 8734; Apr. 20, 1999, D.C. Law 12-261, § 2003(v)(1), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 29-816. Same — Application; filing and recordation; use of public school personnel authorized.

Application for the license referred to in § 29-815 shall be in writing upon forms prepared under the direction of the Educational Institution Licensure Commission, and shall be filed with the Secretary of the said Commission, whose duty it shall be, in case the institution so licensed is incorporated under the laws of the District of Columbia, to forward a copy of said license to the Department of Consumer and Regulatory Affairs for the District of Columbia, who shall indorse upon the certificate of incorporation the fact that said license has been issued. The Educational Institution Licensure Commission is hereby authorized to employ the personnel of the public school system of the District of Columbia, so far as the same may be necessary, for the proper performance of its duties under §§ 29-814 to 29-819, and it shall be the duty of all public officers and bureaus of the federal government concerned with educational matters to render such advice and assistance to the Educational Institution Licensure Commission as it may from time to time consider necessary or desirable for the better performance of its duties under §§ 29-814 to 29-819. (Mar. 3, 1901, ch. 854, § 586c; Mar. 2, 1929, 45 Stat. 1504, ch. 523; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89-791, title I, § 106; 1973 Ed., § 29-416; Apr. 6, 1977, D.C. Law 1-104, § 6(a)(2), 23 DCR 8734; Apr. 20, 1999, D.C. Law 12-261, § 2003(v)(2), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 substituted "Department of Consumer and Regulatory Affairs" for "Recorder of Deeds" in the first sentence.

Legislative history of Law 12-261. — See note to § 29-815.

CHAPTER 9. RELIGIOUS SOCIETIES.

§ 29-901. Acquisition of land restricted.

Cited in Bible Way Church of Our Lord Jesus Christ v. Beards, App. D.C., 680 A.2d 419 (1996), cert. denied, 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494 (1997).

§ 29-904. Same — Tenure of office; vacancies; rules and regulations; removal.

Accounting and financial reporting practices. — Under this section, a religious institution has wide latitude to adopt its own regulations and rules including, presumably, its own accounting and financial reporting practices. Bible Way Church of Our Lord Jesus Christ v. Beards, App. D.C., 680 A.2d 419 (1996), cert. denied, 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494 (1997).

CHAPTER 11. COOPERATIVE ASSOCIATIONS.

§ 29-1123. Eligibility and admission to membership.

Any natural person, association, corporation, incorporated, or unincorporated group organized on a cooperative basis, any nonprofit group, or other entity shall be eligible for membership in an association if it has met the qualifications for eligibility, if any, stated in the articles or bylaws and shall be deemed a member upon payment in full for the par value of the minimum amount of share or membership capital stated in the articles as necessary to qualify for membership. (June 19, 1940, 54 Stat. 485, ch. 397, § 23; 1973 Ed., § 29-823; Apr. 13, 1999, D.C. Law 12-217, § 2(a), 46 DCR 284.)

Effect of amendments. — D.C. Law 12-217 substituted "association, corporation, incorporated, or unincorporated group organized on a cooperative basis, any nonprofit group, or other entity" for "association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group."

Temporary amendment of section. — D.C. Law 11-265 substituted "association, corporation, incorporated, or unincorporated group organized on a cooperative basis, any nonprofit group, or other entity" for "association, incorporated, or unincorporated group organized on a cooperative basis, or any nonprofit group."

Section 5(b) of D.C. Law 11-265 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Cooperative Association Emergency Amendment Act of 1996 (D.C. Act 11-483, January 13, 1997, 44 DCR 626), and see § 2(a) of the Cooperative Association Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-59, March 31, 1997, 44 DCR 2235).

Section 5 of D.C. Act 12-59 provides for the application of the act.

For temporary amendment of section, see § 2(a) of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. Act 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Law 12-203 provided for application of the act.

Legislative history of Law 11-265. — Law 11-265, the "Cooperative Association Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-997. The Bill was adopted on first and second readings on December 3, 1996, and January 7, 1997, respectively. Signed by the Mayor on January 23, 1997, it was assigned Act No. 11-532 and

transmitted to both Houses of Congress for its review. D.C. Law 11-265 became effective on April 25, 1997.

Legislative history of Law 12-217. — Law 12-217, the "Cooperative Association Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-384, which was referred to the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-532 and transmitted to both Houses of Congress for its review. D.C. Law 12-217 became effective on April 13, 1999.

§ 29-1137. Penalties — Unauthorized use of term "cooperative"; existing cooperatives.

(a) Only: (1) associations organized under this chapter; (2) groups organized on a cooperative basis under any other law of the District of Columbia; (3) foreign corporations operating on a cooperative basis and authorized to do business in the District of Columbia under this or any other law of the District of Columbia; and (4) nonprofit corporations operating as trade associations for the principal purpose of providing goods or services to cooperatives shall be entitled to use the term "cooperative", or any abbreviation or derivation thereof, as part of their business name, or to represent themselves, in their advertising or otherwise, as conducting business on a cooperative basis.

* * * * *

(Apr. 13, 1999, D.C. Law 12-217, § 2(b), 46 DCR 284.)

Effect of amendments. — D.C. Law 12-217, in (a), inserted (4) and made related stylistic changes.

Temporary amendment of section. — D.C. Law 11-265, in (a), inserted (4) and made related stylistic changes.

Section 5(b) of D.C. Law 11-265 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(b) of the Cooperative Association Emergency Amendment Act of 1996 (D.C. Act 11-483, January 13, 1997, 44 DCR 626), § 2(b) of the Cooperative Association Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-59, March 31, 1997, 44 DCR 2235), and § 2(b) of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. Act 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Act 12-59 provides for the application of the act.

Section 5 of D.C. Law 12-203 provided for application of the act.

Legislative history of Law 11-265. — See note to § 29-1123.

Legislative history of Law 12-217. — See note to § 29-1123.

§ 29-1141. Foreign corporations and associations; admission to do business.

Application of law of another state. — Where cooperative authority was a business of another state, that state's law controlled in resolving the issue concerning the imposition of a rental surcharge on an owner who leases her cooperative apartment, which is located in the District. Kelley v. Broadmoor Coop. Apts., App. D.C., 676 A.2d 453 (1996).

§ 29-1143. Inconsistent laws deemed inapplicable.

(a) No other law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any other law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of §§ 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the

District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. Chapter 4 of Title 26 (relating to licenses for loaning of money), and Chapter 33 of Title 28 (relating to interest rates) shall not apply to: (1) any association formed under this chapter (whose sole function is to arrange and provide financing for its members); and (2) any members of such association engaged in utility operations; with respect to any contract or agreement between such association and any member relating to a loan of money in connection with such utility operations.

(b) Notwithstanding the provisions of subsection (a) of this section, the provisions of §§ 29-301 through 29-399.51 shall apply to associations formed under this chapter, except insofar as the provisions of the District of Columbia Business Corporation Act are in conflict with the provisions of this chapter. (June 19, 1940, 54 Stat. 490, ch. 397, § 43; Aug. 20, 1970, 84 Stat. 828, Pub. L. 91-385, § 1; 1973 Ed., § 29-843; Apr. 13, 1999, D.C. Law 12-217, § 2(c), 46 DCR 284.)

Effect of amendments. — D.C. Law 12-217 added (b); and, in (a), inserted "other" preceding "law of the District of Columbia" twice.

Temporary amendment of section. — D.C. Law 11-265 added (b); and, in (a), inserted "other" preceding "law of the District of Columbia" twice.

Section 5(b) of D.C. Law 11-265 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(c) of the Cooperative Association Emergency Amendment Act of 1996 (D.C. Act 11-483, January 13, 1997, 44 DCR 626), § 2(c) of the Cooperative Association Legislative Review Emergency Amendment Act of 1997 (D.C. Act 12-59, March 31, 1997, 44 DCR 2235), and § 2(c) of the Cooperative Association Second Emergency Amendment Act of 1997 (D.C. Act 12-203, December 2, 1997, 44 DCR 7498).

Section 5 of D.C. Act 12-59 provides for the application of the act.

Section 5 of D.C. Act 12-203 provides for application of the act.

Legislative history of Law 11-265. — See note to § 29-1123.

Legislative history of Law 12-217. — See note to § 29-1123.

§ 29-1144. Taxation; annual license fee.

(a) Associations formed hereunder, and foreign corporations and associations admitted under § 29-1141 to do business in the District of Columbia and entitled to the benefits of § 29-1137, shall pay an annual license fee of $10.

(b) Any license issued pursuant to this section shall be issued as a Class B General Business endorsement to a master business license under the master business license system as set forth in subchapter 1A of Chapter 28 of Title 47 of the District of Columbia Code. (June 19, 1940, 54 Stat. 490, ch. 397, § 44; 1973 Ed., § 29-844; Apr. 20, 1999, D.C. Law 12-261, § 2003(w), 46 DCR 3142.)

Effect of amendments. — D.C. Law 12-261 added (b).

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-845, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

CHAPTER 12. FRANCHISING.

Sec.
29-1201 to 29-1208. [Repealed.]

§ 29-1201. Definitions.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 2, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 21, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

§ 29-1202. Termination, cancellation, or failure to renew franchise.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 3, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1203. Good cause; opportunity to cure.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 4, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1204. Transfer, assignment, or sale of franchise.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 5, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1205. Nonjudicial dispute resolution.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 6, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1206. Remedies.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 7, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1207. Conflict.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 8, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

§ 29-1208. Application of chapter.

Repealed.

(Mar. 16, 1989, D.C. Law 7-185, § 9, 35 DCR 7906; April 29, 1998, D.C. Law 12-86, § 1002, 45 DCR 1172.)

Legislative history of Law 12-86. — See note to § 29-1201.

CHAPTER 13. LIMITED LIABILITY COMPANIES.

Sec.
29-1371. Same — Procedure for reinstatement.

§ 29-1371. Same — Procedure for reinstatement.

* * * * *

(c) If the Mayor finds that all such documents conform to law, and that the period for reservation of the name has not expired, or if such period has expired, that the name is available for limited liability company use pursuant to the provisions of this chapter, he or she shall, when all fees, charges, interest, and penalties have been paid as in this chapter prescribed:

(1) Endorse on each of such duplicate originals and any such annual report or reports the word "Filed" and the month, day, and year of the filing thereof;

* * * * *

(f) Upon delivery of the petition for reinstatement to the Mayor for filing, the revocation proceedings theretofore taken as to such limited liability company

by proclamation shall be deemed to be annulled, and such limited liability company shall have such powers, rights, duties, and obligations as it had just prior to the time of the issuance of the proclamation with the same force and effect as to such limited liability company as if the proclamation had not been issued, even if the Mayor is unable at the time of delivery to make the determination required for filing by subsection (c) of this section. If the petition for reinstatement, as delivered to the Mayor, does not conform to the filing provisions of this chapter and is not brought into conformance within the period prescribed by subsection (d)(2) of this section, the petition for reinstatement shall be deemed to have never been filed. (July 23, 1994, D.C. Law 10-138, § 72, 41 DCR 3010; Apr. 9, 1997, D.C. Law 11-255, § 31, 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated previously made stylistic corrections in (c)(1) and (f).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.